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OF THE

LIEUT.-GOVERNOR OF BENGAL

FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS.

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Hon'ble H. J. Reynolds (re-appointed 3rd January 1881).
Hon'ble Kristodas Pal (re-appointed 3rd January 1881).
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FOR THE

PURPOSE OF MAKING LAWS AND REGULATIONS.

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Hon. J. E. Caithness (appointed 27th January 1882)
Hon. Mahomed Yusuf (appointed 28th February 1882).
Hon. C. P. L. Macaulay (appointed 4th December 1882).
Colonel the Hon. S. T. Trevor (appointed 4th December 1882).
Hon. Harbuns Sahai (appointed 4th December 1882)

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PROCEEDINGS

OF THE

COUNCIL OF THE LIEUT.-GOVERNOR OF BENGAL

FOR THE

Purpose of making Laws and Regulations.

Saturday, the 19th February 1881.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding.*
The HON'BLE G. C. PAUL, C.I.E., *Advocate-General.*
The HON'BLE H. L. DAMPIER,
The HON'BLE H. J. REYNOLDS,
The HON'BLE H. A. COCKERELL,
The HON'BLE A. MACKENZIE,
The HON'BLE T. T. ALLEN,
The HON'BLE PEARY MOHUN MOOKERJEE,
The HON'BLE F. PRESTAGE,
The HON'BLE KRISTODAS PAL, RAI BAHADOOR, C.I.E.,
The HON'BLE T. W. BROOKES,
and
The HON'BLE AMEER ALI.

AMENDMENT OF THE CALCUTTA PORT IMPROVEMENT ACT, 1880.

THE HON'BLE THE ADVOCATE-GENERAL, in moving for leave to introduce a Bill to amend "The Calcutta Port Improvement Act Amendment Act, 1880," said that Act IV of 1880 empowered the Port Commissioners to borrow money by the issue of debentures under the provisions of sections 9 and 16, subject to certain conditions which were imposed by sections 17, 18, and 19 of the Act. These conditions were that, if interest upon any loan was not paid according to the conditions of the loan, the Lieutenant-Governor might of his own motion, and should on the application of lenders holding not less than one-third in value of the total of the loan in respect of the payment of interest on which default had been committed, attach the tolls, duties, rates, fund or property on the security of which the loan was made, and appoint a receiver. The section further provided that no default in payment of interest should render the loan repayable. Sections 18 and 19 worked out that procedure, section 19

giving the Lieutenant-Governor certain power over the accounts to be kept in case of attachment. This was considered by the Council, he presumed, an inexpensive and expeditious method of recovering in case of default in the payment of interest, and it was thought that the facilities thus offered would be readily accepted. But advertisements having been issued under section 9 of the Act, calling for loans, the Port Commissioners represented to the Government that they were unable to raise loans in the open market under the restrictions imposed under section 17 of the Act. Upon that matter being represented to Government, together with two or three minor matters which he should presently notice, it was deemed advisable to remove the restrictions imposed by the Act in the way of effecting loans, and to give persons lending money the full benefit of any independent action which any debenture-holder might be entitled to under the law. He believed it was not the intention of the Government or of the Legislature in any way to reduce the security on which money was to be advanced, but it was thought that the simple and inexpensive method of obtaining payment in case of default, which was provided under sections 17 to 19—a method which, it was hoped, in the flourishing state of the Port Commissioners, would never come into operation—would give to the debenture-holders sufficient security. However, as a matter of fact, objections were taken, and it was immediately conceded by the Government that those restrictions should be removed. This was one of the purposes for which he moved for leave to introduce this Bill. In the Bill he proposed to repeal sections 17, 18, and 19 of the Act, and then in sections 7 and 8 to introduce a few words to make the subject-matter of the previous sections clear, and to substitute amended sections for them. Then in order to remove the other difficulty that no default of payment of interest should render the loan repayable, it was provided in the form of debentures to be issued that if default be made for two consecutive half-years, either in the payment of interest, or in making the necessary investments on account of the Sinking Fund, the loan should become repayable; and in order to remove any difficulty as regards the question of registration, he had drawn a form of debenture which he thought would be entirely free from any such objection. The difficulties having been removed, he had every confidence that the loan would be immediately subscribed for. Opportunity had also been taken to raise the maximum number of the Commissioners to 13, to enable the Lieutenant-Governor to add a Commissioner to represent the growing interests of Howrah. A section had been added for that purpose. Further, opportunity had been taken to empower the Lieutenant-Governor to make bye-laws regulating the hours of employment of European seamen on board ships lying in the port in work necessitating exposure to the sun. The subject had attracted considerable public attention, and it was not necessary to enlarge upon it. But it was clear to every one who had thought on the subject that exposure to the sun in the very hot months was detrimental to the health and injurious to the lives of seamen and others employed on board vessels in Calcutta. It was known to the Council that, however hard

The Advocate-General.

and injurious the work might be, it was lawful for the master of a vessel to order any member of his crew to do work which exposed him to the sun in the hot months, and disobedience to such order was punishable very severely. It was thought necessary to protect persons so situated, and to give persons employed in vessels lying in the port special protection of a law reasonably limiting the hours of employment. The Port Commissioners had made a recommendation to that effect, and the subject had been referred for the opinion of the Chamber of Commerce. Their answer had not yet been received; but he had no doubt it would affirm the recommendation of the Port Commissioners.

The motion was agreed to.

On the application of the ADVOCATE-GENERAL, the Rules were suspended and the Bill was read in Council and referred to a Select Committee consisting of the Hon'ble Mr. Mackenzie, the Hon'ble Mr. Prestage, and the mover, with instructions to report at the next meeting of the Council.

AMENDMENT OF THE COURT OF WARDS ACT, 1879.

THE HON'BLE MR. DAMPIER moved for leave to introduce a Bill to amend "The Court of Wards Act, 1879." He said, the reason for the introduction of this Bill was a question relating to pensions. Under the impression that the law allowed it, small pensions had hitherto been paid out of the Wards' Fund to persons employed under the Court of Wards, and no objection had been raised. But the question had now arisen in connection with a gentleman of distinguished abilities, who had done great service to the public, besides those which he had rendered to the Court of Wards. It was now considered right to give him a pension in recognition of his services. MR. DAMPIER believed that the Government proposed to give from the General Revenues such part of the pension as would represent this gentleman's services to the public at large, and it was right that the part which represented his services to the Court of Wards should be derived from the funds of the Court of Wards. But the Government of India was now advised that the wording of the existing law did not admit of pensions being charged against the Court of Wards Funds. The original object of the Bill was to remedy this defect.

Then, as his hon'ble and learned friend had just said, the opportunity was taken to amend the law in other points. Some of these were important points, relating to the protection of wards' estates from sale for arrears of revenue. There was a section of the Sale Law, Act XI of 1859, section 17, which protected these estates from sale. The existence of that section was obviously overlooked when the Wards Act of 1870 was passed, and again when the existing Act of 1879, which followed the Act of 1870, was enacted. What was meant to be a corresponding provision was then enacted. But unfortunately the corresponding section did not correspond. The Bill was not yet ready, but with it would be circulated some papers which would show hon'ble members the difference between the two Acts. It was now obviously necessary to amend the law. The provision in the Act of 1859 would be repealed, and the existing law would be so amended as to embody what the Council might consider to be a proper provision on the subject.

The next point was that, under the provision of section 17 of Act XI of 1859, which it would be proposed to the Council to re-enact, the estates of wards were protected from sale for arrears of revenue accruing due while such estates were under the Court of Wards; that is to say, if an arrear accrued a day before a ward attained his majority—if there happened to be an arrear outstanding on the day on which charge of the property was given up by the Court—it could not be recovered by sale of the estate on which the arrear was due. That was well enough, but unfortunately no other means were provided for realizing the arrears. Obviously, provision should be made for the recovery of such arrears in some way. It was proposed to provide that, when an arrear was due at the time when a ward's property was released from the charge of the Court of Wards, the Collector might recover the arrear by attachment of the estate in the same manner as he was allowed to do in respect of an arrear of revenue accruing due from the inherited estate of a minor which had not been taken under charge of the Court of Wards.

The third point in connection with this protection to wards' estates was this: At present an estate could not be sold for arrears of revenue while under the charge of the Court of Wards. MR. DAMPIER was able to show hon'ble members of Council, from the papers which would be circulated with the Bill, that it was sometimes absolutely necessary, in the interests of the ward himself, that an estate should be so sold. When an estate was so deteriorated that it could not pay the revenue for which it was liable, any private zemindar would, as a matter of course, relieve himself of the liability to pay the revenue by letting the estate go to sale; but the law did not admit of a ward's estate being got rid of in this way. The answer which suggested itself at first sight was—"so much the better for the ward; the manager has only got to leave the revenue unpaid; the Government cannot sell the estate." But it was not so. Unfortunately for the ward, there was another section of the law which required that all funds which came into the hands of the manager of a ward's estate must be applied *in the first instance* to the payment of revenue as long as any arrear was outstanding, so that, if any one particular estate belonging to a ward could not pay its own revenue demand, the manager was bound to make up the deficiency from the other funds in his hands. It was proposed therefore to modify the section, which absolutely prohibited the sale of an estate for arrears of revenue, guarding the modification strictly by the condition that no estate would be sold unless the Board of Revenue should be thoroughly satisfied in each case that it was for the interest of the ward that the estate should be sold.

There were no other provisions in the Bill which MR. DAMPIER thought of sufficient importance to bring to the notice of the Council at this stage.

The motion was agreed to

AMENDMENT OF THE CESS ACT, 1880.

THE HON'BLE MR. DAMPIER moved for leave to introduce a Bill to amend "The Cess Act, 1880," and in doing so he said that his remarks would

The Hon'ble Mr. Dampier.

consist in reading to the Council the Statement of Objects and Reasons which accompanied the Bill, and which was as follows:—

"The object of this Bill is to correct certain errors which are found to have crept into the edition of the Bill to repeal the previous Cess Acts, which was ultimately passed by this Council and assented to by the Governor-General, and so became law as Act IX of 1880.

The opportunity is taken to make one or two amendments in the Act, which the working of it has shown to be desirable."

He would, however, add, by way of personal explanation, that the Bill into which the errors had crept was not the Bill which was passed by the Council when he was in charge of it. That Bill did not contain those errors, which he might state were first brought to light in a circular issued by the Board of Revenue. He did not know how the errors crept in when the second Bill was introduced and passed in consequence of the Viceroy having withheld his assent to the Bill which was originally passed.

The motion was agreed to.

AMENDMENT OF THE CALCUTTA MUNICIPAL ACT, 1876.

THE HON'BLE KRISTODAS PAL moved for leave to introduce a Bill to amend the Calcutta Municipal Consolidation Act, 1876, and in doing so he said he had been invited to take charge of the Bill, and he did so with pleasure. He should state at the outset that there was no intention whatever to touch the Municipal Constitution. The Lieutenant-Governor, he was permitted to say, was quite willing to give a full and fair trial to the present system of municipal government in Calcutta. The object of the Bill was partly to give legal effect to the loan arrangements lately entered into between the Government of India and the Calcutta Municipality; also to provide for the repayment of municipal loans which might be advanced by the public by extending the term of repayment from 30 to 60 years, or reducing the contribution to the Sinking Fund from 2 to 1 per cent.; to extend the power of the Corporation with regard to the reclamation of bustees; and to make such other amendments in the provisions of the existing law as had suggested themselves by practical experience. With regard to the first point, he might mention that the Corporation of Calcutta owed to the Government a debt of Rs. 78,81,000. These loans were raised at different rates, namely 4, 4½, and 5 per cent. It was proposed that, if these loans were consolidated, and 60 half-yearly payments of interest and Sinking Fund were made at the rate of 4¼ per cent., the Municipality might be able to save a considerable amount of money in the way of annual contribution to the Sinking Fund, provided that they would agree to make over to the Government the accumulations of the Sinking Fund up to the date of such arrangement. The Municipality accepted the proposal of the Government, and it had since been carried out. The arrangements made were thus summarised in the last administration report of the Commissioners:—

"The Government of India is prepared to close the transaction if the Municipality will surrender its present Sinking Funds, and agree to discharge the rest of the debt by 60 equal half-yearly payments of principal and interest, calculated at 4¼ per cent. It seems probable that neither the Government nor the Municipality would either lose or gain by this

arrangement, and that it would be convenient for the Municipality, whose yearly payments would be reduced from Rs. 5,94,378 to about Rs. 4,67,290, or by Rs. 1,27,089."

By this arrangement the Municipality had been able to save about Rs. 1,25,000 per annum, which was equal to about 1 per centum of the house-rate, and he desired to acknowledge, on behalf of the Corporation, the substantial concession which the Government had made. The next important point was to reduce the contribution to the Sinking Fund from 2 to 1 per centum on loans raised from the public. The principle involved in this contribution was that the present generation was practically made to bear the whole cost of improvements; it was proposed that the cost of improvements of a permanent character should be equally divided between the present generation and posterity, and with that view it was proposed to reduce the contribution to the Sinking Fund. He would also observe that, while on the one hand the concession of Government he referred to had proved beneficial, it had on the other hand placed the Municipality at some disadvantage, because the minimum interest which the Corporation had now to pay for their loans was 5 per centum, whereas the rate of interest on Government loans seldom exceeded 4½. The main object he had in asking for the reduction of the contribution to the Sinking Fund was to help the Corporation in carrying out the doubling of the water-supply; and that object, as the Council was aware, was uppermost in the minds of the Corporation; but owing to financial difficulties and other considerations, they had not yet been able to carry it out. The most important point in the water extension scheme was the 62″ main, objection to which was raised on financial grounds; but if the contribution to the Sinking Fund were reduced as proposed, there would not, he apprehended, be any difficulty on that ground. It was not his intention, nor did he think this the place, to discuss the question of the main; but if a 62″ main was provided, it would not only meet the wants of Calcutta, but, he was told by competent men, would also suffice for a supply of water to the suburbs.

The third point in the Bill was the subject of bustee reclamation. He believed that the Government here, as well as the Home Government, were particularly anxious that active measures should be taken for the reclamation of bustees in the town. When the Municipal Act was amended in 1876, it was considered necessary to vest the Municipal Commissioners with extensive powers in this respect. There was, however, one defect which was unfortunately not remedied at that time. The procedure laid down by the Act of 1876 was as follows:—That if the Commissioners should find certain bustees or blocks of huts injurious to the health of the locality, they should serve notice on the owner, specifying the necessary improvements, and calling upon him to make them at his own expense. But should the owner neglect to do so, the Commissioners were empowered to carry out the improvements at the cost of the Municipality and recover the expenditure from him. The result would be that the owner of a bustee would be deprived of his property for the sake of improvements wholly beyond his means. When the Bill of 1876 was before the Council, BABOO KRISTODAS PAL had pointed out that that provision was not sufficient, and that it would

The Hon'ble Kristodas Pal.

press very severely on poor proprietors, and he drew attention to Mr. Cross's Artizans' Lodgings' Bill, which was then before Parliament, under which the Town Councils and Commissioners in the United Kingdom were empowered to take up lands by paying compensation to owners to make the necessary improvements, and to let or re-sell the lands. This Council, however, did not accept that view, but passed the Act without the equitable provision which he took the liberty of suggesting. In reviewing the first administration report of the present Corporation, His Honor the present Lieutenant-Governor directed attention to this most important point, and recorded a resolution from which BABOO KRISTODAS PAL would read a few lines:—

"Mr. Eden believes that the proper way of dealing with these bustees is for the Municipality to set aside a certain amount of money every year, and to buy up block after block of bustees, clear it, drain it, lay it out with roads, fill in all dirty tanks and hollows, and then sell the land thus reclaimed in convenient lots for the erection of houses for the people on plans to be approved by the Municipality. The owners of these bustees are frequently not in a condition to pay for their improvement, even though it be shown to them beyond question that the value of the land will be enormously improved by the removal of nuisances and the levelling of the land If the matter were taken up systematically by the Municipality, they would probably find that the profit of reclamation was so certain as to warrant their raising special loans for the object, and thus, in a few years, getting rid of these sources of disease."

BABOO KRISTODAS PAL might mention that the late Municipal Commissioners followed the plan which His Honor suggested in this Resolution, and he held in his hands a list of the bustees which were reclaimed by them, by purchasing entire blocks of land and selling them in building lots. The first of these was Dunkin Bustee—a very large piece of land, which was a great nuisance to the neighbourhood, but the character of which was now entirely changed; in the place of dirty, stinking, miserable hovels, there were now palatial residences. In the same way Money Bustee was reclaimed, and another known as Peterson's Bustee. These were the three great bustees in the southern division of the town which were reclaimed in the way he had described. The present Municipal Commissioners had not lost sight of the question, but they were divided in opinion on the subject. He, and his friend DR. RAJENDRA LALA MITTRA, held that, under the law, municipal money could be applied to the purchase of bustees, that being one of the objects to which the municipal funds were applicable. Other Commissioners, however, held a different opinion, and at last the question was submitted to the learned Advocate-General, who was of opinion that, under the Act, it was not competent for the Commissioners to purchase land for the reclamation of bustees. He would read the following extract from that opinion:—

"The expression 'reclamation of unhealthy localities' in the 26th section, does not in my opinion apply to, or justify the purchase of, lands and the construction of necessary works of sanitation in bustees. The works referred to in the section in which the words 'reclamation of unhealthy localities' occur, are all works in which the public generally, and not private individuals, are interested; but assuming section 26 and the sections commencing with 280 in Part V of the Act to apply to the same class of subjects, and that the reclamation of unhealthy localities is an expression tantamount to taking sanitary measures with

regard to blocks of huts, still I do not think that the effect of sections 26 and 280, 281 and 282, read together, is to allow the Commissioners the choice of one of two alternatives."

This being the opinion of the highest legal authority, the Commissioners were unable to move in the matter, and it was now thought desirable to take power from the Legislature to apply the municipal funds to this purpose.

Another object of the Bill was to give practical effect to the provisions of the present law for the regulation of druggists' shops. It would be in the recollection of those members who were in the Council in 1876, that power was given to the Health Officer to inspect dispensaries where European medicines were sold, but unfortunately the law did not give him power to seize or condemn drugs which might have become inert or noxious through deterioration by reason of time or climate. The Health Officer of the Corporation thought that such power ought to have been given to him, and it was also considered advisable to apply to the Council for power to require the proprietors of druggists' shops to employ certificated compounders. Fatal accidents not unfrequently occurred through the ignorance or neglect of compounders. At present these compounders, or the majority of them, had no professional training whatever, and it rested with the employers to engage the services of such persons as they thought fit. The Government some time ago drew the attention of the British Indian Association to this subject, and suggested a system of certificating compounders, and the Bill accordingly proposed to empower the Government to make rules on the subject. If such a system were introduced, the students of the Campbell Medical School, and of the Dacca and Patna schools, would find a large field for employment. At present this measure would be confined to Calcutta, but if it should work well, it might be extended to the mofussil hereafter.

The last point in the Bill to which he would refer was the question of allowing pensions to persons partly paid by the Government and partly by the Corporation. On this subject there had been considerable corespondence between the Government and the Corporation. The latter did not agree in the view taken by the former, viz. that the Corporation should pay the pensions of such persons, on the ground that they were in no sense servants of the Municipality, but a part of whose salaries was borne by the municipal fund under a special legal obligation. He must frankly state that he did not accept the decision of the Government in this matter, but, as he had been put in charge of the Bill, he considered it his duty to introduce a provision on the subject in deference to the wishes of Government. It would be for the Council to say whether the power sought should be given to Government to compel the Corporation to pay the pensions of persons who were not servants of the Corporation, because their appointment and dismissal did not rest with it, but a part of whose salaries was met from contributions made by it.

There were a few other minor points in the Bill in respect of which he would not make any observations at present.

His Honor the President, in supporting the motion, said that, before putting the question for leave to introduce the Bill to amend the Calcutta Municipal Consolidation Act, he wished to say how glad he was that it had

The Hon'ble Kristodas Pal.

been brought forward by a gentleman who had shown himself, by his many years of hard and earnest service, to be a most able and zealous representative of municipal interests. He was quite sure that, while the Bill was in the hon'ble mover's hands, nothing would be done which would in any way interfere with the well-being of the Corporation. He would just say, in passing, with reference to the proposal to defer the time for the extinction of the Government Consolidated Loan by extending the period for repayment and decreasing payments towards the Sinking Fund, that it had his entire support, and had been recommended for the sanction of the Government of India on the distinct understanding that, in consideration of what was now being done to assist and relieve them, the Municipality would take sufficient measures to increase the water-supply of the town in such a manner as would give a complete and thoroughly efficient supply not only to the town, but enable the Commissioners to meet the demands which would probably be made on them by the Suburbs. His Honor understood that these views were now accepted by the majority of the Commissioners, and he supported the Bill on the understanding that the Corporation would be prepared to meet the Government so far.

As regards bustees, His Honor thought the town never would be what it ought to be until the power for taking up lands, reclaiming them, and letting them out, was conferred on the Municipality. He himself had been under the impression that that body had this power. He very well recollected that in old days great results had been obtained by the Town Commissioners by taking up bustee lands in this way, and he thought it very desirable that measures should be taken to regulate the construction of buildings, whether European or Native, and other schemes for drainage and ventilation, on plans to be approved by the Commissioners. He was not sure how far the Municipality were to blame in this matter, but he had observed that some lands which had been reclaimed and made healthy and clean had now been allowed to pass away into filthy bustees again. He might mention that the land in the neighbourhood of Theatre Road, known as Baman Bustee, which had been taken up by the old Commissioners, was now rapidly retrograding into a bad native bustee.

As regards compounders, it was sad to think of the amount of mischief and loss of life which had been caused by the gross ignorance of the persons in charge of the many petty druggists' shops scattered all over the town. The subject had been forced upon the attention of Government very frequently in several ways, and not unfrequently by the proceedings of the Coroner's Court, and His Honor thought the time had arrived when it was the bounden duty of the Corporation to see that arrangements were made to protect the lives of people by prohibiting these shops being placed in the hands of men who had little or no training or knowledge in the use of drugs; and he was willing to co-operate with the Municipality in this matter by establishing in the Government Medical Schools and Colleges cheap classes for compounders entirely distinct from the Government medical classes now in existence, the pupils of which would be fit to be employed by the owners of drug shops with a certain amount of reliance as compounders.

As regards pensions, His Honor was sorry his hon'ble friend was unable to support that part of his own Bill. It seemed to him most unreasonable that the Corporation should dispute their liability to pay the usual proportion of the pensions of men who were lent to them by Government, and whose salaries they distinctly recognized their liability to pay so long as they had the benefit of their service. He did not understand the distinction made by the hon'ble mover that these persons, though employed under the Municipality, were not their servants. They were lent by the Government to the Municipality, and all payments to them should be chargeable to that body. He felt reason to hope that on a full consideration of the subject the hon'ble mover would be able to give this part of the Bill also his support.

The motion was agreed to.

The Council was adjourned to Saturday, the 26th February.

Saturday, the 26th February 1881.

Present:

His Honor the Lieutenant-Governor of Bengal, *Presiding.*
The Hon'ble G. C. Paul, C.I.E, *Advocate-General,*
The Hon'ble H. L. Dampier,
The Hon'ble H. J. Reynolds,
The Hon'ble H. A. Cockerell,
The Hon'ble A. Mackenzie,
The Hon'ble T. T. Allen,
The Hon'ble Peary Mohun Mookerjee,
The Hon'ble F. Prestage,
The Hon'ble Kristodas Pal, Rai Bahadoor, C.I.E,
The Hon'ble T. W. Brookes,
and
The Hon'ble Ameer Ali.

AMENDMENT OF THE CESS ACT, 1880.

The Hon'ble Mr. Dampier moved that the Bill to amend the Cess Act, 1880, be read in Council. He said that, in asking for leave to introduce this Bill, he explained that the object of it was to correct certain errors which had been made in the edition of the Bill which was finally passed as Act IX of 1880. He would first mention the main error, out of which arose the necessity for this Bill. Under the old Cess Act, the interest payable on arrears of cess was 12 per cent., whether the cess was payable to Government by the zemindar, or to the zemindar from his ryots. The Council agreed after full discussion, both in Select Committee and when the Bill was being passed, that the rate of interest should, merely for facility of calculation, be raised to 12½ from 12 per cent., 12½ per cent. being exactly two annas on each rupee. All the sections of the Bill which were affected were altered accordingly, and so the Bill was originally passed by this Council, and submitted for the approval of the Governor-General. Hon'ble members were aware that the Bill as first submitted was

vetoed. Two lakhiraj sections were then omitted, and the Bill as so amended was again passed by this Council. In the Bill as it was finally passed by the Council, while the sections providing that the rate of interest on arrears payable by the ryot to the zemindar should be twelve and a half per cent. were correctly reprinted, in the section determining the rate of interest on arrears payable to Government, the rate was by some unaccountable error reduced again to twelve per cent., the words "and a half" having dropped out. That was the substantial error for which it became necessary to introduce a Bill.

The other amendments of the Act were such as the critical perusal which accompanied the working of an Act had brought to light.

The first of these was embodied in section 2 of the Bill. As the Act stood, the words in section 10 seemed to imply that interest on the Public Works Cess should be credited to the Road Cess Fund of the district. That of course was not intended.

Then came the proposed section 40A, to make which thoroughly intelligible to the Council Mr. Dampier should have to enter into a lecture on the minutiæ of administration which would be out of place. He had tried to explain the matter as fully as he could in the papers which had been circulated to the Council. Briefly, it was this: In Chittagong there was a vast estate, called the Noabad Estate, of which the Government was proprietor. The tenures in this estate, amounting to some 37,000, were scattered all over the district, and in some of these the amount of rent payable was most trifling, and the amount of cess was also extremely small, ranging down to items of less than one rupee As they now stood, the different laws which regulated the collection of rent and cesses, required the collection of the cesses and of the rent on these 37,000 holdings by separate establishments and under different processes. In Chittagong, say fifty per cent. of the payers never thought of paying their dues until compulsory processes of some sort were taken out against them. Why should they? On the one hand some thirty per cent. interest would be obtained for the use of money; on the other, arrears of Government revenue carried no interest, and a man would indeed be blind to his own interests if he did not withhold the money due as revenue, and use it profitably and productively until the last moment.

As the law stood then, if a man fell into arrears of rent to the amount of one rupee, and of road cess to the amount of four annas on one of these 37,000 Noabad talooks, the rent and the cess must be collected by two different establishments and by two different processes. The Road Cess Committee, through their agent the Collector, and his cess establishment, must collect the four annas of cess; whereas the one rupee rent must be collected through the revenue tehsildary establishment of the Collector by another process. This would necessitate the issue of some 37,000 processes instead of some 19,000, which only would be required if the rent and the cess were collected together under one and the same process The advantage of collecting both together by the same establishment and the same process was obvious, and he hoped the Council would therefore accept the section which was proposed to effect this object.

The last amendment which it was necessary for him to notice was that contained in section 9 of the Bill. The British Indian Association had brought to notice that the heading of the schedule there mentioned required zemindars to give certain details which very often they could not give as to the lands contained in their zemindaries; it was therefore proposed to relieve them of the obligation by adding to the heading of column 4 of that schedule the words "if known," after the words "area occupied.".

The HON'BLE KRISTODAS PAL said, following the lines laid down by the hon'ble mover of the Bill, he wished to draw attention to Part I of Schedule A, annexed to the Cess Act. This Part of the schedule required the owner to give details of lands in the actual occupation or cultivation of the person submitting the return, and a "Note" to that Part said that only nij-jote lands and unculturable unlet lands should be included in this Part. BABOO KRISTODAS PAL did not observe that Note when the Act was passed, and he did not understand the object of it. The principle of the cess was that all lands paying rent or yielding profit in some shape or other were to be assessed; but under this schedule the landlord was required to make a return of unculturable and unlet lands, and as in another column the probable annual value of the land was required to be given, although no rent or profit was derived from it, the result would be that lands which yielded no profit would be brought under assessment. Then, again, many zemindars were not in a position to give a correct return of unculturable and unlet land in their *nij* possession: auction purchasers in particular would experience great difficulty in giving the information required. The provision in question was not contained in the Road Cess Act of 1871; why it was introduced in the amending Act he could not say; but as it was in contravention of the principle of the cess, he hoped the hon'ble mover would take the matter into his consideration in Select Committee.

The HON'BLE MR. DAMPIER remarked that the Select Committee to which the Bill would be referred would no doubt consider the suggestion made by the hon'ble member, granting the premises that it was against the principle of the Act to assess the lands to which he had referred.

The motion was then agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble Mr. Reynolds, the Hon'ble Kristodas Pal, the Hon'ble Peary Mohun Mookerjee, and the Mover, with instructions to report within seven days.

AMENDMENT OF THE CALCUTTA PORT IMPROVEMENT ACT, 1880.

THE HON'BLE THE ADVOCATE-GENERAL moved that the report of the Select Committee on the Bill to amend the Calcutta Port Improvement Act Amendment Act, 1880, be taken into consideration, in order to the settlement of the clauses of the Bill. He had on this occasion to observe that the Select Committee had substituted a new section for section 10 of the Act, to make it clearly understood. Since the last meeting of the Council, a letter had been received by the Government of Bengal from the Chamber of Commerce, expressing their concurrence in the recommendation made by the Port Commissioners, and expressing a hope that the power vested in the Port Commis-

sioners would be exercised with caution and due regard to the public convenience. The ADVOCATE-GENERAL thought he might safely say that the desire of the Chamber of Commerce would be fully met, bearing in mind that the rules to be passed under the Act were to be made by the Lieutenant-Governor on the recommendation of the Port Commissioners. A slight mistake had crept into the form of debenture which he would wish to have corrected before the Bill was passed. Four-and-a-half per cent. was mentioned, in the form of debenture, as the rate of interest to be paid. That was a mistake; the rate of interest should be left blank, to be determined at the time when a loan was about to be contracted.

The motion was agreed to.

On the motion of the ADVOCATE-GENERAL the clauses of the Bill were considered for settlement in the form recommended by the Select Committee, and the Bill was then passed with the correction above referred to.

The Council was adjourned to Saturday, the 12th March.

Saturday, the 12th March 1881.

PRESENT:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding*,
The HON'BLE H. L. DAMPIER,
The HON'BLE H. J. REYNOLDS,
The HON'BLE H. A. COCKERELL,
The HON'BLE A. MACKENZIE,
The HON'BLE T. T. ALLEN,
The HON'BLE PEARY MOHUN MOOKERJEE,
The HON'BLE MAHARAJAH LUCHMESSUR SING BAHADOOR OF DURBHANGA,
The HON'BLE F. PRESTAGE,
The HON'BLE KRISTODAS PAL, C.I.E., RAI BAHADOOR,
and
The HON'BLE AMEER ALI.

BURIAL BOARD (CALCUTTA AND ITS SUBURBS).

THE HON'BLE MR. MACKENZIE moved for leave to introduce a Bill to provide for the appointment of a Burial Board in Calcutta and its suburbs.

He said that the condition of the older Calcutta burial-grounds had frequently of late years attracted the notice of Government, and been unfavourably commented on by the public. The two cemeteries in the neighbourhood of Park Street had long since ceased to be used for purposes of general interment, and were fast lapsing into a state of ruin and disrepair. The monuments, consisting chiefly of those vast masses of brickwork which our predecessors were wont to pile over the remains of their departed friends, were falling in many cases to pieces, and there was no authority at present vested with power to deal with them. Even in the Circular Road grounds, though matters were of course not so bad, there was still in the older portions of the cemetery much disorder and untidiness from the want of a controlling authority competent to direct the repair, removal, or alteration of broken

down tombs. At the same time, owing to the fact that this cemetery was used by three different sections of the community—the Church of England, the Roman Catholic body, and the Non-Conformists—there was a want of uniformity and neatness in the manner in which the grounds were kept, the monuments put up, and other work done. The establishments were, moreover, under no proper control. It was proposed therefore to provide by law for the appointment of a Burial Board, in which should be represented the Calcutta Corporation, the Health Department of the Town, the Public Works Department of Government, and, as far as possible, the clergy and laity of the different religious bodies using the cemeteries. To this Board would be made over the control and management of all the Government cemeteries. Power was also taken to enable those interested in private cemeteries to make them over to the management of the Board on such terms as regards the defrayal of expenses and the like as the Lieutenant-Governor might approve.

The motion was put and agreed to.

The HON'BLE MR. MACKENZIE said the Bill had already been published under the authority contained in Rule 15 of the Rules for the Conduct of Business, and although much public attention had not been drawn to the subject, the matter was a simple one, and there could, he believed, be no possible objection to the Bill being at once read in Council and referred to a Select Committee for consideration. He therefore applied to His Honor the President to suspend the Rules in order that the Bill might be read in Council.

The President having declared the Rules suspended—

The HON'BLE MR. MACKENZIE moved that the Bill be read in Council. The Bill, he said, provided for the appointment of a Burial Board, in which the Calcutta Corporation and its Health Department would be represented, as well as the Public Works Department of the Government, and the three Christian bodies now using the cemeteries—viz. the Church of England, the Roman Catholic Church, and the Non-Conformists; the Chairman of the Board being appointed by the Government. The Bill gave power to bring under the control of the Board all or so many of the Government burial-grounds (not being military burial-grounds) situated in the town or suburbs of Calcutta, as might seem fit to the Lieutenant-Governor. The Board would receive and account for fees paid for the use of burial-grounds and the erection of monuments therein, and for any Government grants placed at their disposal. They were empowered to appoint and control their own subordinate establishment. The Bill also provided for the making of bye-laws; for regulating the conduct of business; for securing the preservation, repair, or removal of existing monuments, and for regulating the dimensions and erection of new monuments; for regulating the mode of payment of fees and charges, and the expenditure of the same; and for controlling the execution of all works within burial-grounds. These last were the most important provisions of the Bill, which were intended to give the Burial Board full power and control over the working of cemeteries. There was also inserted

The Hon'ble Mr. Mackenzie.

in the Bill a provision to meet cases like the following: There were several minor burial-grounds belonging to small communities—for instance, the Scotch, Armenian, Greek, and other cemeteries—which were at present managed by the communities to which they belonged. These communities might perhaps some time or other wish to have their burial-grounds placed under the control of the Board, which they might consider, with the experience it would possess in the management of cemeteries, would be better able to administer the trust than private bodies liable to frequent changes and having no legal powers. Accordingly power was taken under the Bill to bring such private grounds under the control of the Board, on the application of those interested, on such terms and conditions as the Lieutenant-Governor might approve.

The motion was agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble Messrs. Reynolds, Allen, Prestage, and the Mover, with instructions to report within a week.

AMENDMENT OF THE EXCISE ACT, 1878.

THE HON'BLE MR. REYNOLDS moved for leave to bring in a Bill to amend "The Bengal Excise Act, 1878," and in doing so, he said that the amendment of the Excise Act had been urged upon the Government from two different quarters. First the Board of Revenue reported that they found a practical difficulty in the working of section 58 of the Act. Section 9 authorized the Collector to fix the limits within which liquors, not manufactured at a licensed distillery, should not be introduced or sold without a pass; but section 58, the corresponding section which provided a penalty for breach of an offence against section 9, declared that whoever introduced or attempted to introduce for sale any spirituous liquors manufactured at another place, into the limits fixed for the consumption of such liquors manufactured at such distillery, without a special pass, should be liable to a fine. The Board pointed out that a great practical difficulty had arisen from the insertion in section 58 of the words "for sale." The difficulty was that, when liquor was found in transit, or in the act of being introduced from one circle to another, it was impossible to show that it was intended for sale, while in the case of an actual sale it was difficult to prove that the liquor which was sold was the very liquor which had been introduced from another circle.

The other quarter from which reference was made to the Government for the amendment of the Act was the Chief Commissioner of Assam, who urged that the Act did not meet some cases of what might be termed "foreign exciseable articles." These were dealt with by section 19 of the Act, which provided that spirituous liquor, manufactured beyond the limits of British India, should, on passing the limits of the territories to which the Act applied, be charged with duty, and the corresponding section which provided a penalty was section 64, which declared that any person found in illicit possession of spirituous liquors, manufactured beyond the limits of British India, should be liable to fine. It appeared, however, that in Assam there were certain parts of the province which were not beyond the limits of British India, but in which

no excise law was in force, for instance the Jynteah Hills, and in consequence that section did not apply to those territories, and liquor had been introduced from the Jynteah Hills where it was not subject to the payment of duty on manufacture, and the section did not admit of the levy of duty on such liquor. Section 64 was also imperfect in another particular, inasmuch as it applied only to spirituous liquors and not to intoxicating drugs. It appeared that ganja grew plentifully in the hills in a wild state, and under section 61 and section 64, as they stood, no one was liable to any penalty for being in possession of such ganja as long as it was held in quantities not exceeding a quarter of a seer. It was represented by the Chief Commissioner that there was a considerable illicit traffic in ganja which was brought from the hills beyond British territory into Assam, and it was desired that measures should be taken to put a stop to this.

As Mr. Reynolds was at present only moving for leave to introduce a Bill, it was not necessary for him to explain in detail the provisions which the Bill would contain.

The motion was agreed to.

AMENDMENT OF THE COURT OF WARDS ACT, 1879.

The Hon'ble Mr. Dampier moved that the Bill to amend "The Court of Wards Act, 1879," be read in Council. He said that in asking permission to introduce this Bill, he made some remarks on points which now stood embodied in sections 2 and 3 of the Bill, and it would not be necessary for him to touch on those points again. He should therefore proceed at once to section 4, which contained a re-arrangement of sections 48 and 49 of the present Act. Those sections provided that the funds which came into the hands of a Manager should be expended for certain purposes in a certain order of priority. Hon'ble members, who had read the annexures to the Bill, would see that it was found impossible to adhere to that order of priority in practice; for instance, the Manager of the Narail Estate reported that a good Hindu would not take his food, until the family idols were worshipped, but according to law, the Manager was not authorized to pay for pooja expenses until certain other things were provided for, and if the law was to be obeyed, he would, in certain cases, be obliged to starve his ward. Managers of wards' estates had a right to ask for such protection as could, by reasonable forethought, be devised against the necessity of breaking the law in such cases. Mr. Dampier had accordingly endeavoured to recast these sections so that they should be more workable. He believed that the Council would consider the really important point in these sections to be the limit that was put on the expenditure of not more than 10 per cent. of the surplus proceeds of the estate on purposes of general benefit and improvement of the ward and his estate. Mr. Dampier had defined the restriction and limitation more precisely than it was defined in the Act. It was necessary under the existing law to obtain the special permission of the Lieutenant-Governor in such cases before a larger proportion than 10 per cent. of the surplus was so used: in that respect it was not proposed to weaken the check which the law imposed on the action of the Court of Wards.

The Hon'ble Mr. Reynolds.

Then, in the section which was substituted for section 49, MR. DAMPIER had tried also to express the meaning of the law more precisely, but he had put in a new proviso for the protection of the Court. According to the existing law, the surplus funds of an estate, belonging to a female who was of sound mind, and above the age of 21, was to be paid to her without question: as the law stood, she could claim the surplus at any moment. But it was obvious that the Collector, before handing over the accumulated surplus, must keep a working balance in his hands, and it was reasonable that he should also keep a sufficient balance to meet any considerable expenditure of which the necessity could be foreseen, and which could not probably be met out of the profits of the following year. These provisions were therefore introduced for the protection of the officers who had the management of the estate.

The next provision to which MR. DAMPIER would refer was contained in section 7 of the Bill, and related to suits instituted by female wards who had attained the age of 21 years. This was a new provision, and he did not know whether it would meet with the approval of the Council. It had been suggested by a practical difficulty in the working of the Act, and he hoped to get the opinion of the learned Advocate-General on it before the Bill was passed.

The next section was section 8 of the Bill, which was intended to meet the difficulty of getting accounts from farmers in wards' estates: the section was taken from a provision in the Land Registration Act, which was accepted by the Council as the best possible procedure. It was provided that the Collector could impose a daily fine on a farmer until he produced the accounts.

Section 10 of the Bill was to remedy a defect in the Public Demands Recovery Act. As the Act stood, the application of the Manager of a ward's estate to the Collector for a certificate for the recovery of arrears of rent must be on stamped paper. It had been discovered that, by an oversight, the Act did not provide for the recovery of the interest on the arrears, of the cost of the stamp, or of the costs of executing the certificate; so that, if the ward's Manager elected to proceed for recovery of arrears of rent due by the certificate procedure, he must either give up the interest due and the costs, or proceed to recover them by the separate procedure of a civil suit. The section by which it was proposed to remedy this omission would stand as section 63 of the Wards Act of 1879, taking the place of the section of the Act on the same subject which originally bore the same number, and which had been repealed by the Public Demands Recovery Act.

The last section of the Bill provided for the recovery, from those into whose hands any portion of the ward's property had passed from the charge of the Collector after its release, of any expenses which had been incurred by the Court on account of the property, in cases in which, in consequence of want of funds, oversight, or any other cause, such expenses had not been paid out of the funds of the ward's property before it was released from the charge of the Court.

The HON'BLE AMEER ALI said there was one point which he thought it proper and convenient to bring to the notice of the hon'ble member in charge

of the Bill at this stage. It was a point which had struck several practical lawyers, and could be discussed in Select Committee, and, if thought proper, could be included in the amended Bill which the Committee would submit for the consideration of the Council. It was a difficulty which had arisen with reference to section 27 of Act IX of 1879, which provided as follows:—

"Whenever any Collector has reason to believe that any person residing in his district, or being the proprietor of an estate borne on the revenue-roll of his district, should be declared or adjudged to be a disqualified proprietor under section 6, he shall make such enquiry as he may deem necessary, and if satisfied that such person should be so declared or adjudged, shall make a report of the same to the court;

and the court shall, on receipt of such report, make such order consistent with this Act as may seem to it expedient."

Thus it would be seen that it lay in the hands of the Collector to make a report, and the Court of Wards made an order with reference to the person so reported to be disqualified as might be consistent with this Act. Section 6 defined who the disqualified proprietors were, one class of such persons being minors, and a minor was defined by the Act to mean a person who had not completed the age of twenty-one. It appeared to MR. AMEER ALI that these provisions of the Court of Wards Act involved some degree of inconsistency with the Indian Majority Act IX of 1875. That Act declared that a person who was not a Ward of Court, or for whom a guardian was not appointed by a Court of Justice, should be considered a major on the completion of his eighteenth year; but the Court of Wards Act provided that a person was a minor who had not completed his twenty-first year; so that under the last-mentioned Act a person who had under the Indian Majority Act entered into the enjoyment of all his legal rights, and had become vested with all the legal capacities of a major, might, on the report of a Collector, be deprived of those capacities, and be declared disqualified and incompetent to enter into any legal transaction. MR. AMEER ALI thought that the inconsistency to which he had called attention might, if possible, be removed, and therefore mentioned the point for the consideration of the Select Committee. The conflict existing between the two Acts was likely to occasion much hardship to people who entered *bonâ fide* into transactions with a person who was a major under Act IX of 1875, but who, under the Court of Wards Act, was declared a disqualified proprietor.

The HON'BLE KRISTODAS PAL said he could not allow this occasion to pass without acknowledging the liberality of Government in recognizing and rewarding the eminent services of Dr. Rajendralala Mitra to the cause of literature to his country, as well as to the State. Those services were well known and highly appreciated not only in this country, but also in Europe. The object of the Bill was primarily to give validity to the pension which the Government had been kind enough to grant to him, and BABOO KRISTODAS PAL felt sure that the native public would hail with pleasure and gratitude this generous recognition of the distinguished services of this illustrious man.

With regard to the remarks which had fallen from the hon'ble member on his right (MR. AMEER ALI), he could not concur with his hon'ble friend as to

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the propriety of re-opening the question of the age of minors under the Court of Wards. He must say that that question had been discussed threadbare and settled after long and mature deliberation. He thought it was to the advantage of the proprietors of estates that the period of the nonage of minors under the Court of Wards had been extended to twenty-one years. It had not unfrequently been found that young men suddenly coming into the possession of large properties, without having their character properly formed and their judgment matured, fell into the hands of intriguers around them, and he thought the provision of law which enabled the Court of Wards to keep charge of an estate until the proprietor had attained the age of twenty-one years was calculated to prove highly beneficial to him.

The HON'BLE MR. MACKENZIE, in reference to the question of the age of majority, said that, in spite of what had fallen from his hon'ble friend opposite (BABOO KRISTODAS PAL), he thought it advisable that the matter should be considered by the Select Committee. It was not proposed by the hon'ble member who spoke first (MR. AMEER ALI), as he understood him, to reduce the age of majority, but to draw attention to the fact that, when a person who might come under the Court of Wards had attained the age of 18, it was uncertain, as the law stands, whether he was a minor or a major. Apparently the Court of Wards could take charge of his estates at any time up to his reaching the age of 21. There was nothing in the Act compelling the Court to come to a final decision about taking over the estate on the first occasion of its becoming aware of the disability. In a recent case, where a large proprietor had entered into the possession of his estate at the age of 18 years, it had been found useful by Government to have the power of check given, by its being apparently able to direct the interference of the Court of Wards at any time, although, so long as the property was well managed, Government did not wish to interfere. There might, however, be some question of the legal effect of such a course of action, and some difficulty in defining the position of such a minor-major, and it was just as well that the Select Committee should look into the matter in order to see whether any further definition or explanation of minority or majority was desirable.

HIS HONOR THE PRESIDENT said that, before putting the question, he wished to say, with reference to the remarks which had fallen from the hon'ble member on the left (MR. AMEER ALI), that he was very much averse to any such alteration in the age of majority under the Court of Wards Act, which should have the effect of preventing the Government from interfering for the protection of an estate the proprietor of which had not attained the age of twenty-one years. The case which had been cited by the hon'ble member on the right (MR. MACKENZIE) was a very well known case. While it was very desirable that the Government should have power to interfere, it was very often unnecessary to do so provided proper arrangements were made for the management of the estate by the family. The case which had been mentioned exemplified the working of the section. It was the case of the proprietor of a large estate who died suddenly, leaving an heir between the ages of 18 and 21. The proprietor had before his death made arrangements for the

management of his estate which worked exceedingly well, and it was considered very desirable that those arrangements should continue. But soon after the death of the proprietor, it came to the notice of His Honor that endeavours had been made to upset the system of management which the deceased proprietor had established, and he only succeeded in having the then existing arrangements continued by threatening to exercise the power vested in the Government to interfere in the management of the estate if any change was made. He believed that in this way one of the most valuable estates in Bengal had been saved from ruin. The power, although it might only be necessary to exercise it by way of influencing the action of the heir, was a very valuable one, and therefore he would wish that the power be retained. The subject had already been brought to the notice of Government by the hon'ble member in charge of the Bill, and it was one well worthy the consideration of the Select Committee, not with the view of altering the principle of the law, but getting rid of apparent inconsistencies, and of making it perfectly certain that the Government should have power to interfere in cases in which it might be desirable to do so. The hon'ble member who had raised this question would no doubt be placed upon the Select Committee, and the subject could then be carefully considered.

The motion was then agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble Messrs. Reynolds, Allen, Ameer Ali, Peary Mohun Mookerjee, Kristodas Pal, and the Mover, with instructions to report within a fortnight.

AMENDMENT OF THE CALCUTTA MUNICIPAL ACT, 1876.

The Hon'ble Kristodas Pal moved that the Bill to amend "The Calcutta Municipal Consolidation Act, 1876," be read in Council, and in doing so he said he should endeavour to give a brief analysis of the provisions of the Bill. In the first part of the Bill provision had been made to legalize the consolidation of the loans borrowed from the Government, and with respect to this point, it might be open to question whether it was at all necessary to make legal provision of this kind, because he found, on reference to the Municipal Act of 1876, that the Government loans were contracted outside the Act. It had, however, been found desirable to give legal effect to the consolidation of the Government loans, and the provisions of sections 2 and 3 had accordingly been inserted in the Bill. The opportunity had also been taken to indemnify the Trustees in charge of the Sinking Fund for making over to the Government the Government portion of the accumulations of the Fund up to date, in order to carry out the terms of the consolidation of the Government loans. The whole transaction had been completed—it was now a *fait accompli*, but the sections had been drawn on the lines of the Port Commissioners Amendment Act, in order that the Commissioners might at a meeting, other than an ordinary meeting, give effect to the transaction.

Power was given by another section to the Commissioners to set apart annually, in respect of future loans for the drainage and water-supply of the town, one per cent. on the total amount of the loans as a Sinking Fund for the

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repayment of the loans. He had explained to the Council that, under the existing law, the Commissioners were required to assign two per cent. as a contribution to the Sinking Fund, but that contribution necessitated increased taxation, and unnecessarily threw a heavy burden on the present generation of rate-payers. The Commissioners therefore represented to the Government that it would be both reasonable and equitable that the liability should be divided between the present generation and posterity, and that the contribution to the Sinking Fund should therefore be reduced from two to one per cent. The Government of Bengal had acceded to that representation of the Municipal Commissioners, and supported it in a letter to the Government of India on the subject. With His Honor the President's permission he would read an extract from that letter. After alluding to the consolidation of the Government loans, and the relief afforded to the town by the arrangements made, the Secretary to the Government of Bengal remarked—

"The Corporation are now considering a scheme for largely increasing the supply of water, and extending it to the suburbs, and the Lieutenant-Governor proposes to amend Act V (B. C.) of 1876 so as to give the Suburban Commissioners power to levy a water-rate to cover the expenses incurred on their behalf by the Calcutta Municipality. The work in contemplation will be of such a nature as to last long beyond the present generation. The drainage works, too, are essentially of a permanent nature, and their benefits will extend to posterity. On the other hand, there is no ground for apprehending any decline in the prosperity of Calcutta, within any period to which reasonable anticipation can extend. Municipal taxation in Calcutta is very high, and the Lieutenant-Governor believes that any increase in the rates would seriously interfere with the progress of the town. Only once during the ten years, from 1870 to 1879, did the aggregate rate fall below 16 per cent., and in four of these years it was 18 or 18½ per cent. It is a question whether, even now, the population of the town is not less than it would be if the rate of municipal taxation were lighter In the suburbs taxation is also high, and it is represented that, if the rate to be levied is to include provision for a two per cent. Sinking Fund contribution, the scheme will probably have to be abandoned. Under these circumstances, the Lieutenant-Governor proposes to make provision in the amending Act for a Sinking Fund contribution of one per cent. only on all public loans raised for water-supply, on the understanding that the Municipal Commissioners of Calcutta determine to lay a new 62 inch main conduit from Pultah, and he would make a similar provision in regard to loans for drainage works. He trusts the Government of India will signify their approval of this measure."

Baboo Kristodas Pal did not know whether any reply had been received to that letter, but he hoped the recommendation of the Government of Bengal would be accepted by the Government of India. The rate-payers of Calcutta ought to be grateful to Government for relieving them from so heavy a charge on the Town Fund, which was dictated by a sense of justice to the present generation. Whilst on this subject, he might advert to the provision made in section 12 of the Bill for the extension of the water-supply to the suburbs He considered it his duty to point out that it was no part of the obligation of the Municipal Commissioners of Calcutta to supply water to the suburbs—that their sole duty was to supply water to their own rate-payers. But if the Commissioners of the Suburbs desired to avail themselves of the Calcutta supply, and would pay for it, the Calcutta Commissioners would certainly assist them. At present, the law did not authorize the Commissioners

of Calcutta to extend the water-supply to the suburbs, nor to levy a rate for the purpose; it was therefore proposed to give them power to extend the supply to the suburbs on the application of the Suburbun Municipality and the consent of the local Government, and to impose a water-rate on the suburbs sufficient to cover interest on the capital for the extension works, contribution to the Sinking Fund, and the cost of maintenance and supervision, and the necessary renewal of works. Accordingly, section 12 had been introduced, but he hoped it would be distinctly understood that it was not the object to throw an undue burden on the Calcutta rate-payers. If the people of the suburbs wished to drink the water of Calcutta, they must pay for it—unless they consented to pay the price, they could not justly be held entitled to the water.

He now came to some of the detailed provisions of the Bill. Section 5 legalized the designation "Town Council." It might be in the recollection of the Council that, when the Municipal Act of 1876 was passed, there was no provision in that Act for the constitution of a Town Council; but Mr. Metcalfe, who officiated for some time as Chairman of the Corporation, gave the name "Town Council" to the General Committee of the Commissioners. The business of the Municipality was carried on partly by the Chairman and partly by Committees of the Commissioners: there was the General Committee, which met every week—sometimes more than once a week: there were Special Committees which sat on special subjects and made reports, and these reports were considered by the Commissioners in meeting. The General Committee performed the functions of the body which, in Bombay and other places, was called the Town Council, and it was desired that that designation should be legalized; but it was not intended in any way to change the constitution of the Committees or their present procedure.

Then, some practical inconvenience had resulted under the present provision of the law, which required that the budget should be laid before the Town Commissioners at their quarterly meeting in October, when the Doorga Pooja holidays intervened It was proposed to alter the time for the submission of the budget from October to November.

He now came to section 14 of the Bill, which related to pensions. He did not wish to discuss this subject at length, as he stated, when he applied for leave to introduce the Bill, that he was not responsible for the introduction of this section. He believed there had been some correspondence between the Government of India and the Government of Bengal on the subject, and it might probably be arranged hereafter that the section should be omitted, but he could not give any positive information to the Council regarding it—he would leave it to His Honor the President to explain the position in which the question now stood. But he repeated that, in his opinion, it was not fair and equitable to throw any charge for these pensions on the Municipal Fund, for the officers concerned were in no sense servants of the Municipality—they were not appointed by the Corporation—they were not liable to the control of the Commissioners, nor to dismissal by them. The Municipality paid a lump sum for the maintenance of the police under an Act of the Legislature, and it was never intended or declared that the funds of the Municipality should be burdened

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with the pensionary allowances of persons who were all along considered to be Government servants. From 1867 to the present time, the Municipality had only been called upon to pay a certain portion of the cost of the police, but they were now for the first time asked to make a contribution towards their pensions as well. He hoped that the Municipality would be exempted from that burden.

He would now advert to what was known as the bustee question. The sections in the Bill had been drawn on the lines of The English Artizans Dwelling Act, and in framing the sections, care had been taken that no land should be acquired arbitrarily or hastily. First of all, any land or area which might be considered to be in a state dangerous to health would be reported upon by two competent medical men in addition to the Health Officer of the Town. After receiving the report of such medical men, the Commissioners would consider what improvements should be made. They might, if they thought it necessary, report to the Government, recommending that the land be acquired under the Land Acquisition Act, and they might then reclaim the land and carry out the improvements at their own expense, or re-sell the land to private individuals under certain conditions as to building, drainage, and other sanitary requirements. Compensation should of course be paid according to the Land Acquisition Act, and the Commissioners were authorized to borrow money for this purpose.

The next subject which BABOO KRISTODAS PAL would notice was the registration of shops for the sale of European drugs. There were some defects in the existing law as to registration, which it was now proposed to remedy by giving full power to the Health Officer. For instance, the present law did not give power to the Health Officer to seize any medicines which had become deteriorated by reason of climate or age, or to require the proprietor of any shop to employ a competent compounder. Section 21 gave power to the Municipal Commissioners to require the proprietors of drug shops to employ persons duly certified, under such rules as the Government might from time to time provide on the subject. His Honor the Lieutenant-Governor was pleased to say, at the last sitting of the Council, that he would be happy to co-operate with the Municipality by instituting a compounder's class in the Campbell Medical School, and lay down certain conditions to test the professional qualifications and capacity of men to be employed in druggists' shops.

The next provision in the Bill gave power to the Commissioners to license fuel shops near burning grounds. This subject was perhaps not thoroughly known to hon'ble members of the Council. They were doubtless aware that, near the burning ground, shops were kept for the sale of fuel and other articles for cremation: great abuses at one time existed in respect of these shops, and his friend, Baboo Chunder Mohun Chatterjee, moved Mr. Wauchope, who was then Commissioner of Police for Calcutta, to put a stop to those abuses by licensing one or two shops for the sale of fuel. The abuses were so great that Mr. Wauchope, though not having the support of the law, considered it necessary by a stretch of executive authority to regulate the sale of fuel at these shops by licensing one or two of them. That arrangement

continued when the late Justices came into existence. Sir Stuart Hogg examined the question, and he was also satisfied that, unless some hold was had on the sale of fuel at the burning ghats, great abuses would again arise, and he therefore continued the arrangements made by Mr. Wauchope, and those arrangements had since been in force. But lately, owing to a new interpretation of the law by a Bench of Magistrates in Calcutta, rival shops had sprung up, and some police cases had resulted in consequence. It was therefore proposed to give power to the Commissioners to license fuel shops with a view to put down disputes and litigation, and to check abuses. Section 24 of the Bill provided for that purpose.

These were the main provisions of the Bill; the other sections covered minor amendments, which did not call for particular remarks. But there was one point deserving of notice, which was at present outside the Bill He meant whether the Municipal year should be brought into harmony with the Financial year of the Government. Hon'ble members had seen amongst the papers circulated with the Bill a letter from Mr. Secretary Macaulay, in which reference was made to this subject. The Municipal year in Calcutta corresponded with the calendar year, but the Secretary of State urged that the Municipal year in all the Presidency towns should be made to correspond with the Official year. This question was referred to the Commissioners some time ago, and BABOO KRISTODAS PAL found that it was reserved for consideration till the time when the Municipal Act might need amendment. The question had therefore been now again urged for consideration. He, for his own part, thought it would entail great practical inconvenience on the Municipality if the Municipal year were made to correspond with the Official year. All the municipal licenses corresponded with the calendar year, and if the Financial year were made the Municipal year, then the year of such licenses must be altered, the books of the Municipality must also be altered, and at least for one year the tax-payers, who had to take out these licenses, would have to pay license fees for a year and a quarter, and great practical inconvenience would thus arise. The object of the Government was, he believed, to have the municipal accounts made up according to the Financial year, and he understood that there was an executive order in existence under which the municipal accounts were furnished to Government according to the Financial year, so that the primary object of the Government, he ventured to think, had already been attained by the executive arrangements already in force. But if the Government should insist on the change of the Municipal year, it would be for the Select Committee to consider how far the wishes of Government might be met.

The HON'BLE AMEER ALI said he thought advantage should be taken of the present opportunity to do away with the anomalous position of the Municipal Commissioners of Calcutta, who were also Justices of the Peace, in trying cases in which the Municipality was a party. He believed doubts had suggested themselves in several quarters as to the legality of their proceedings, and he believed that such doubts existed in Bombay also. He had mentioned the matter to his hon'ble friend on his left (Baboo Kristodas Pal), and he

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thought it right that attention should be drawn to it in Council, that measures might be taken to solve the difficulty referred to. The Bombay Government was about to introduce a Bill to empower Presidency Magistrates, who were also Municipal Commissioners, to try cases in which the Municipality was a party; and as there was no special provision in the Calcutta Municipal Act giving such authority to them, he would urge upon the hon'ble member to introduce a provision in the Bill by which the question might be settled in a satisfactory manner one way or the other.

The Hon'ble Peary Mohun Mookerjee said there was one portion of the Bill regarding which too much care could not be taken in settling its provisions—he meant the sections of the Bill relating to the sale of drugs. It was certainly not intended that a grocer's or bunniah's shop should be required to be registered, or that such shops should employ certificated compounders to superintend the sale of such innocuous substances as ginger, cinnamon, or aniseed, which, to use the words of the Bill, were "drugs enumerated in the British Pharmacopœia." It would operate as a great hardship if the wording of the section was not altered so as to exclude the sort of shops to which he had referred. He thought that abkarry shops, or shops for the sale of exciseable articles, should also be expressly excluded, because the section as it stood would include these shops also.

The Hon'ble Mr. Mackenzie said, perhaps it was desirable that he should say a word with reference to the sections bearing on the Government municipal loans. It was doubtful whether they were really required in the shape in which they appeared in the Bill. It would be remembered that the Calcutta Municipality had made repeated efforts to get some reduction of the burden imposed on the present generation of tax-payers on account of the drainage and water-supply of the town, and the Government of Bengal had consistently supported the Municipality in those endeavours. The consolidation of the Government loans was one of the measures of relief which the Government of India, on representations made, had been good enough to grant. The Government had lent the Municipality 52 lakhs of rupees on account of water-supply at the low rate of interest of 4 per cent., and various other sums for drainage, markets, municipal offices, and the like, at 4½ per cent., subject to certain stipulations regarding sinking funds and repayments. The Municipal Act took, however, no direct cognizance of such loans, which were simply matters of contract between the Government and the Municipality. The Government made its own terms with the Municipality, and if it became necessary to enforce compliance with those terms, the Government knew where to find its remedy. When, therefore, in 1878 the Municipality applied for some modification of the terms of repayment, the Government of Bengal made certain proposals to the Government of India, and the Government of India took these into consideration and passed orders regarding them. No special need for legislative sanction was apparent. What the Government of India proposed was that the Municipality should hand over to the Government the Sinking Fund which had been held as against the Government loans, and that the whole of the balances of the loans should then be consolidated into one loan at 4¼ per cent., to be repaid in sixty equal half-yearly instalments. This proposal was believed

to be advantageous to the Municipality, and was accepted. It was then, however, found that the Trustees of the Municipality held not only the Sinking Fund accruing against the Municipal Debentures, but also the Sinking Fund accruing against the Government 4½ per cent. loans in one and the same account. A separation of accounts became necessary, and was easily effected. But a doubt arose whether, looking to the fact that section 337 of the Act bound the Trustees to hold all moneys in their possession when the Act was passed—when held for the purpose of paying off any sum borrowed by them—subject to the trusts declared in that section, some legislation was now required to show that the section was not intended to apply to, or affect in any way, the arrangements regarding the Government loans. This doubt might be fanciful perhaps, but it was the only matter in connection with the consolidation of the Government loans which seemed to him to call for legislation at all. There was again a point in connection with the Public Debenture loans which might or might not require legislation. In the Municipal Act provision was made that the sum of 2 per cent. on the *total* sum borrowed by the Commissioners for purposes of any enactment thereby repealed, and exclusive of the Government loans, was to be held as a Sinking Fund. The Government of India suggested that the Municipality should, in respect of future loans, instead of setting aside a sum of 2 per cent. on the gross amount of the loan, set apart 2 per cent. only on its net amount as it might stand at the beginning of each year—that is to say, after deducting the amount of Sinking Fund held against the loan. That was a matter for the Municipality to consider, and so far they had not come up officially for any amendment of the law to enable them to take advantage of the proposal; but he observed that in the Bill effect was apparently sought to be given to it. The second clause of section 4 of the Bill provided that, in respect of loans contracted after the passing of the Act, a sum of not less than 1 per cent. on the total sum borrowed by the Commissioners, after deducting the total amount previously set apart as a Sinking Fund in respect of such loans, should be set aside yearly towards the discharge of the loans. This proposed a double concession to the present generation of tax-payers. The hon'ble mover of the Bill had only referred to one—the reduction of the rate of payment to the Sinking Fund; but it would be seen there was a further modification, in that this percentage was to be calculated only on net, and not on gross, indebtedness. He might further remark that, if the Sinking Fund was to be calculated on the net debt, there was perhaps no necessity for a Sinking Fund at all. It would be sufficient to provide that the sum of 1 or 2 per cent., as the case might be, should be appropriated annually to buying up and cancelling Municipal Debentures. After all, however, it was doubtful whether legislation was required to meet the case of these future loans, seeing that, under section 334 of the Act, the terms of loan and repayment had to be settled in each case by Government and the Commissioners. Section 337 was only designed to protect the *status quo* at the time of passing the Act in 1876.

MR. MACKENZIE thought it desirable to make this explanation, because the object of the sections to which he had referred might not be under-

stood. He would not follow the hon'ble member through the other remarks which he had made, except to say shortly, in respect to the extension of the water-supply to the suburbs, that it would be wise policy to recognize something like solidarity between the town and suburbs. According to the provision as it now stood in the Bill, the Calcutta Municipality might carry out in the suburbs any scheme of water-supply they pleased, at any cost they pleased, and charge the rate-payers of the suburbs any amount they pleased: the rate of interest to be charged not being even mentioned in the Bill He did not think that this was an arrangement that either the inhabitants of the suburbs or the Government could contemplate with satisfaction.

The HON'BLE KRISTODAS PAL explained that it was not intended that the Municipality should have the arbitrary power of imposing a water-rate on the suburbs. Specifications and estimates of works necessary for the extension of water to the suburbs would be submitted to the Government, and as no such extension could be carried out without the sanction of the Lieutenant-Governor, the determination of the rate would ultimately rest with His Honor. It was provided in the Bill that the Municipality should have power to levy such a rate as would cover all costs of construction, establishment, and maintenance; but if the rate were fixed by law, it might prove insufficient and embarrassing. The determination of the rate ought therefore to be left to the Commissioners subject to the sanction of the local Government.

HIS HONOR THE PRESIDENT said that, before putting the motion, he wished to make one or two remarks on the subjects which had just been alluded to; and first, in answer to what had fallen from the hon'ble mover, HIS HONOR thought that the section relating to the supply of water to the suburbs required very careful consideration by the Select Committee. It seemed to him that this section, as worded, would impose upon the suburbs a liability very much in excess of what he believed was right. He was sorry to see a tendency on the part of the Municipal Commissioners of Calcutta to treat the Suburban Municipality with a sort of jealousy. There seemed to be some objection on the part of the Calcutta Municipality to recognize that the suburbs were, as a matter of fact, part of Calcutta, and an inclination to shut them out from the advantages which the people of Calcutta enjoyed chiefly from the assistance of Government. The Calcutta water-works, as he and hon'ble members well knew, had been carried out by the Calcutta Municipality, but they could never have carried them out unless they had received very marked assistance from the Government. They ought to be willing to let the suburbs share in the advantages thus derived, if they could do so without any extra expenditure to themselves. The water-works were carried out by a loan of half a million from the Government, and the Municipality had every facility in the way of the services of engineering officers from the Government, and they were allowed to construct the work a distance of 14 miles along a Government road. This being so, HIS HONOR thought they should recognize the fact that the health of Calcutta and its prosperity were to a great extent wrapped up in the health and prosperity of the suburbs. There were many people who resided all day in Calcutta, but who lived in the suburbs, and who came here every day to do their work.

Calcutta was dependent to a great extent on the suburbs for labour and other conditions which made life and trade in Calcutta possible. He thought that, instead of grudging the suburbs aid in the matter of water-supply, they should allow them ungrudgingly such benefit as they could enjoy from the existing head works and mains of the Calcutta service without detriment to Calcutta. It was, of course, quite fair that if the water-service was extended to the suburbs, the residents of the suburbs should pay such a rate as would entirely relieve Calcutta of any extra cost *bonâ fide* incurred for that purpose, but they should not be called upon to pay any charges which Calcutta would have to incur if the water-supply was not so extended. It seemed to him that the section, as now drawn, left it open to the Calcutta Municipality to assess the people of the suburbs to a degree which would involve a prohibitory charge by making them pay something in excess of what was the fair cost of laying down the water in the suburbs. He quite agreed that all extra expense involved in extending the works to the suburbs would be a fair charge upon the suburbs, but he strongly protested against throwing upon them the cost of works which were not rendered necessary exclusively by that extension, and he hoped that the Select Committee would give their careful considera-ation and see that some proper control was provided, so that the suburbs might not be shut out altogether by a prohibitory rate, or that the rate imposed upon them was not made unreasonably heavy.

He would now come to the question of pension. Hon'ble members had just been told that the Municipal Commissioners objected to pay any-thing towards pensions of Police officers, because they neither appointed nor controlled the Police: he must remind them that the payment of the Police was a duty which was thrown upon them by law just as much as drainage, water, and other rates; they had to prepare a budget which was to receive the sanction of Government, and after the budget had been received, the local Government determined, year by year, how much it would give towards the maintenance of the Police as a contribution to Municipal Funds. The Munici-pality had to find the pay of the Police by law, less only such amount as Government saw fit to contribute year by year: and pension was really only a form of deferred pay. Although we all had great respect for the Municipal Commissioners, and the way in which they managed their work, he did not think that the detailed control of the Police was a matter which could in any way be advantageously vested in the Corporation. As a matter of fact, particularly as regards pension, the Government had always behaved with great liberality to the Municipality. About two years ago, His Honor received a proposal from the Government of India calling upon the Municipality to pay a contribution towards the pension of the Commissioner of Police. He pointed out that the Municipality paid a very heavy sum for the maintenance of the Police, that the municipal rates were very high, and that the Municipality should therefore, in his opinion, not be called upon to make any contribution for such purpose. The Government of India replied that, although they claimed the principle to be correct, they were willing, in consideration of what the Municipality was doing, to make the pension a part of the

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contribution from the Government, and that claim had been withdrawn. Since then, about the beginning of this year, he received a letter from the Government of India, directing him to take measures for the amendment of the Municipal Act, in order to make the Municipality bear a share of the pensions and gratuities granted to servants who were partly paid by the Government and partly by the Municipality. He must say that that principle seemed to him to be perfectly fair and justifiable, but, as he had before said, he was willing to recognize the fact that the Municipality had very heavy charges to meet, that taxation was very high, and though the charge for pensions was not a heavy item, he desired to save them as much as he could from further expenditure for Police; he accordingly wrote to the Government of India as follows:—

"The proposal to require the Calcutta Municipality to contribute for pensions has been more than once discussed. The circumstances have materially altered since Mr. Dampier's letter No. 530, dated 31st January 1868, was written, and Sir Ashley Eden is of opinion that the validity of the claim of Government to these contributions is indisputable; but he thinks that the present time is not opportune for enforcing this claim. As has already been stated in my letter No. 143, dated 23rd ultimo, to the Financial Department, on the subject of the Sinking Fund contribution on future public loans for water-supply and drainage, taxation in Calcutta is extremely high, and any considerable increase in the burdens thrown on the rate-payers must affect the prosperity of the town. The Commissioners are about to incur very heavy expenditure in increasing the supply of filtered water—a measure absolutely indispensable to sanitary progress. Government have unceasingly urged upon them the necessity of pushing forward vigorously the work of filling up filthy tanks and improving the condition of bustees in the town. The extension of the water-supply will remove one obstacle to the prosecution of the first measure; while the provision about to be made in the amending Act, enabling the Commissioners to acquire bustee land for the purpose of reclaiming and building on it, or letting it for building sites, will give the Municipality ample powers to deal with the second question. But while the way will now be open to the execution of those essential sanitary reforms, it is most important that no avoidable financial difficulties should be allowed to arise. The Lieutenant-Governor believes that it would have a very good effect, and would greatly strengthen the hands of Government, in insisting on the systematic prosecution of these reforms, if the Government of India were to postpone for the present the enforcement of their claim to pensionary contributions, and to declare, as was done in the case of the Chairman's contribution for leave and pension allowances, that the exemption, so long as it is permitted, must be held to be a substantial contribution by Government to the municipal revenue of the town."

He had this morning received a reply from the Government of India to that letter, in which they said:

"I am directed to acknowledge the receipt of your letter No. 175, dated the 7th instant, and in reply to say that, under the circumstances represented, the Governor-General in Council is pleased to sanction the recommendation of His Honor the Lieutenant-Governor, that the Government should, for the present, forego the enforcement of its claim for pensionary contributions from the Calcutta and Mofussil Municipalities.

"The principle that such contributions are claimable should, however, be definitely asserted in the Municipal Acts now under amendment in Bengal; and it would, in the opinion of the Governor-General in Council, facilitate the settlement of the question, and prevent risk of future misapprehension, if the obligation were at once imposed in the legislation at present under consideration of the Government of Bengal, power being reserved to the local Government, with the previous sanction of the Governor-General in

Council, to exempt the Calcutta or other Municipality at any particular time from the payment of contribution, in the event of sufficient reasons being shown for such temporary exemption."

That was how the matter now stood. The Government of India had consented to forego its demand for contribution to pension, but they wished to have the principle asserted in the Act. His Honor himself must say that he saw no great object in inserting the principle in the Act if it was the intention to forego payment, and he would take an opportunity of making a further representation, and point out that the liability having been declared by the Government, it would be better to leave the whole question to be settled hereafter, the Act being amended when necessary for this purpose, rather than to disfigure the Act in the way in which it was proposed by putting in a provision which was not to be enforced. Whether the Government of India would consent to that proposal, he could not say; but in the mean time the Select Committee should consider the orders of the Government of India, and endeavour to frame a section which would meet the views of the Government of India.

He did not think that there was anything further in the Bill which called for remark in this stage, but he had no doubt that its provisions would receive the careful consideration of the Committee, and that they would also consider the suggestion which had been made by the hon'ble member on the left (Mr. Ameer Ali).

The motion was then agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble the Advocate-General and the Hon'ble Messrs. Cockerell, Mackenzie, Allen, Ameer Ali, and the Mover, with instructions to report in a fortnight.

AMENDMENT OF THE CESS ACT, 1880.

The Hon'ble Mr. Dampier moved that the report of the Select Committee on the Bill to amend "The Cess Act, 1880," be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee.

The motion was agreed to.

The Hon'ble Mr. Dampier moved that the following note be substituted for the note which stood below Part I of Schedule A:

"Note.—In the body of this statement should be entered only nijjote lands and such uncultivated lands in the use and occupation of the maker of the return as are capable of assessment on their annual value."

This amendment, he said, was the result of the opinion expressed by the hon'ble member opposite when the Bill was read in Council, and also in Select Committee. A communication had since been received by the Lieutenant-Governor from the British Indian Association on the subject. It turned on the point whether uncultivated nijjote lands were to be entered in the return as liable to assessment or not. There had been a good deal of discussion on the matter informally, and the Government had ultimately accepted the amend-

The President.

ment which MR. DAMPIER now moved, and which he hoped would meet with the approval of the Council.

The HON'BLE KRISTODAS PAL said he was willing to accept the amendment if it was worked out in the spirit in which it was moved. He hoped that the Board's instructions to Collectors would be sufficiently explicit so as not to give rise to complications in future. As far as he understood the object of the Cess law, it was that the cess should be calculated on the rental or profit derived in some shape or other, and the definition of "annual value" in the Act of 1880, although somewhat vaguely worded, implied that only land capable of valuation in some form or other, that was to say, land yielding profit or some advantage to the owner, was liable to assessment.

The HON'BLE MR. DAMPIER observed, in reply, that it was impossible that any pledge should be given in this Council on behalf of an institution so proverbially irresponsible and intangible as a Board, but he would express a confident hope that the Board of Revenue would endeavour to do full justice to the intention which actuated the introduction of this amendment.

The HON'BLE MR. MACKENZIE remarked that it was not the principle of the original Road Cess Act that the assessment should fall only on actual rental or profits; possible profits had also to be considered. Under section 4 of the Act, all "immovable property" was liable to pay road cess; and the term "immovable property" was defined in section 3 to include land. But "land" meant "land, whether cultivated, *uncultivated*, or *covered with water*." Land falling under the last part of that definition might very well be land yielding no actual profit. It was not, however, apparently the intention of the Act that land which was absolutely worthless should pay cess, for that on which the assessment was calculated, namely, the "annual value of the land," was defined to be the "total rent paid or, if no rent was actually paid, the rent which would be reasonably expected to be payable during the year by all the cultivating ryots thereof, or by other persons in actual use and occupation thereof." These last words led to the inference that waste lands which were absolutely unculturable, or capable of yielding no return of any kind, were not to be assessed, but where land might be made capable of yielding a rent under any circumstances it must pay road cess, whether the owner chose to utilize it or not. He believed, however, that in practice only lands returning actual profits were included in the returns.

The motion was put and agreed to.

The HON'BLE AMEER ALI moved that the proviso in clause 3, section 44 of Bengal Act IX of 1880, commencing with the words "subject, however," and concluding with the words "the holders of such share," be omitted. He said that the great hardship which was entailed upon the co-sharers of a mehal by the insertion of this proviso in section 44 was the reason which induced him to bring forward the motion. He had received several communications on the subject from zemindars in Behar, one of which he forwarded to the hon'ble member in charge of the Bill. The hon'ble member was good enough to consider the suggestion, which however he thought to be impracticable. MR. AMEER ALI himself was of the same

opinion. The suggestion was to the effect that the cesses should be required to be paid with the Government jumma; but it appeared to him that it would be hardly possible to do so unless the cesses were consolidated with the Government revenue. The only remedy seemed to him to be the omission of the proviso mentioned in the amendment. It occurred only in clause 3, and presumably applied only to such co-sharers as were mentioned in that clause. There appeared to him therefore to be no difficulty in omitting it. MR. AMEER ALI did not see the justice of making co-sharers, who were in every respect separate, who paid their jummas separately, who had separate accounts with the Collector for Government revenue, liable for the laches of a co-sharer, who was a co-sharer only in name and by a fiction of the law. He would read, with the Hon'ble President's permission, a passage from the communication already referred to by him, to show the great hardship which was caused by the joint-liability clause in section 44 of the Cess Act. It was as follows:—

"In the province of Behar, the mehals, generally speaking, consist of ten or twenty mouzahs, each owned by numerous and different co-sharers, so much so that the *malik* of one mouzah is not acquainted with the *maliks* of the other mouzahs, nor is he aware of the different shares in the remaining mouzahs held by the respective *maliks*. As there is only one and the same *touzih* number for the mehal, a joint assessment is made in respect of the same. And when the Road and Public Works Cesses run into arrears, the shareholders of the mehal cannot possibly know which particular sharer is liable for such arrears, and whether the debt in reality is due or not, and if due, how much it amounts to. The payment consequently is impossible. The co-sharers and the shareholding proprietors of larger shares do not allow Road and Public Works Cesses to fall into arrears. The holders of small shares generally allow the cesses to remain unpaid, so that, in the event of the same being paid by the large shareholders, it is difficult for them to reimburse themselves. Under these circumstances many mehals would be put up to sale, and innocent parties deprived of their estate along with the defaulters."

The provision in the Revenue law by which the entire body of co-sharers were made liable for default committed by one of them in the payment of the Government cess, was a traditional rule handed down from former Governments, who not unfrequently visited the sins of the fathers on the heads of the sons. It appeared to MR. AMEER ALI, however, that the circumstances connected with the separate payment of revenue by co-sharers did not apply to the separate payment of cesses. He could understand the reason for the Revenue authorities placing the payment of Government revenue on a different basis from the payment of cesses, which was a due of quite a different nature—cesses, as a matter of fact, were not payable in such large amounts as the Government revenue. It was possible that when default was committed in the payment of revenue, and the specific share in default was set up for sale, the highest offer might not be equal to the amount of revenue due; but it could hardly ever happen that, when a specific share of an estate was set up for sale for arrears of cess due, the highest offer would not suffice to meet the amount due. He therefore thought that there was no sufficient reason for the insertion of the proviso in clause 3, section 44 of the Cess Act, and he knew that it caused a great deal of hardship on persons who were co-sharers in a mehal,

The Hon'ble Ameer Ali.

and therefore the only means of remedying that hardship was to strike out the proviso in clause 3 altogether. He did not see that the omission of the proviso could do any harm in respect of the recovery of the cesses; the section remained intact, and the specific share remained primarily liable for recovery of the arrears. The whole mehal would remain liable for the Government revenue as before, but the other co-sharers would not suffer for the laches of one co-sharer, generally a small shareholder, in the payment of cesses. In view of the hardship and vexation occasioned by the law as it stood at present, he hoped the Council would agree to the amendment proposed by him, or the Bill might be referred back to the Select Committee, with instructions to devise a clause calculated to obviate the evils to which he had referred.

The HON'BLE PEARY MOHUN MOOKERJEE said he entirely agreed in this amendment. If the objectionable passage contained in clause 3 of section 44 of the Cess Act were expunged, he thought the security for recovering arrears of cess would not be in the least jeopardized: arrears of cess were ordinarily so small in amount, that he thought there was no fear of the Government incurring any loss by reason of not being able to recover those arrears if the provision to which objection had been raised was struck out. He thought that the considerations affecting cess and revenue were so different that there could be no comparison whatever as to the means to be provided for the recovery of arrears of cess in the one case and of revenue in the other. He perfectly agreed with the hon'ble member in thinking that great hardship was experienced by shareholders from the operation of the proviso which he now sought to remove from the Act: they were not only liable to be sold out, if the revenue of a co-sharer had not been paid, but they ran a similar risk if a small arrear of cess were due on account of a small fractional share of an estate in which they had no interest whatever.

The HON'BLE MR. DAMPIER said the hardships arising from joint liability for the payment of cesses were, he presumed, the same in character and very much less in degree than those which arose out of joint liability for the payment of Government revenue. The hon'ble gentleman, the mover of this amendment, in speaking of the Government enforcing that joint liability for revenue, likened it to the visiting of the sins of the father upon the children It was not for MR. DAMPIER to give the hon'ble gentleman a lecture on the law of contract, but he would ask him to remember that an estate when created was created as a whole—the engagement with the Government was for the estate as a whole. One condition above all others was attached, that, without the consent of the Government to the division of an estate, and the assessment of the revenue in proportion to the shares into which it was divided, there should be no disruption of the joint liability for the payment of revenue. The process which the law afforded to proprietors for getting rid of this joint liability was well known as the Butwarrah law, and those joint proprietors who wished to take advantage of that law could do so without asking for any favour from the Executive Government.

If they did not choose to do this, certainly the sons had so far to suffer for the sins of their fathers, that they inherited their estates with precisely the

liabilities which their fathers had attached to them, or subject to which the fathers had voluntarily acquired them. It was not unusual for sons to suffer for the sins of fathers to this extent in matters of property.

MR. DAMPIER would next notice the last remark which the hon'ble mover of the amendment had made. He said that, where the Government revenue was in arrear, it might perhaps happen that the sale of the share in default would not yield sufficient to cover the arrear, but that the amount of cesses payable was so small, in proportion to the market value of an estate, that that was not a possible contingency where arrears of cess and not revenue were due, and that therefore it was practically unnecessary to keep alive the ultimate joint responsibility of all the co-sharers in an estate for arrears of cess due on a share of the estate, to be enforced only in case the arrear was not realized by sale of the share only. In answer to the communications to which the hon'ble gentleman referred, MR. DAMPIER had pointed out that the proposal was founded upon the misconception that the liability for payment of cess followed the land. That was not the case—it followed the person. After putting in force the certificate procedure, the share of the estate belonging to the defaulter might be sold just as his interest in any other land, unconnected with the cess in arrear, might be sold for the debt—but not otherwise.

These remarks arose directly out of what had fallen from the hon'ble member in moving this amendment, but the proposed amendment raised so important a question, that MR. DAMPIER had considered it very thoroughly before coming into the Council-room. The argument which had been advanced was a specious one in no bad sense, but in the sense that the advantages of the proposed measure were patent and lay on the surface, whereas the objections were latent—hidden under a mass of rubbish and details, from which to exhume them required the pick-axe of an expert. This particular question of relieving the joint sharers in an estate from liability on account of the default of a co-sharer was a matter of such importance, the benefit which this proposal would confer on the individual tax-payer was so great, it was in a direction in which MR. DAMPIER was so often pressed to go, and the measure was one of which he would be so glad to advise the adoption if it were possible, that he thought it due to the Council to explain as fully as possible why it was impossible in the general interests of the public to accept this amendment or any other in the same direction.

But in order to make the reasons intelligible, he was obliged once more to ask the Council to allow him to give them one of those homilies on revenue details for which he was so often obliged to ask their indulgence:—

"The difficulty of accepting the amendment lies in the fact that the sections of Act XI of 1859, which treat of the opening of separate accounts for shares of the sudder jumma, do not require that the share of the sudder jumma, in respect of which the separate account is opened, shall bear the same proportion to the entire sudder jumma of the estate as the assets or value of the fractional share, or of the land in respect of which the separate account is opened, bear to the entire assets or value of the estate,

The Hon'ble Mr. Dampier.

If it were otherwise, if the law insisted, as the Butwarah law does, on a proper proportion being kept up between assets and sudder jumma, it might be possible for the Government to entertain the hon'ble member's proposed amendment, for it might with reasonable safety be assumed that, when a share in an estate, for which a separate account has been opened by the Collector, is brought to sale for arrears of revenue, the sale will yield a surplus over the arrear of land revenue on which the Collector might lay hands in payment of any arrear of cess due from the same proprietor. But, as the law stands, there is nothing to prevent a joint proprietor in an estate from having a separate account opened in respect of 12 annas of the entire sudder jumma, that is, accepting for himself the liability to pay 12 annas of the entire sudder jumma, while declaring himself to be the proprietor of a very small fraction only of the estate, of which fraction the assets are, say, not more than one-eight of the entire assets of the estate, and insufficient even to pay the share of the sudder jumma for which he causes a separate account to be opened in his name.

Under these circumstances, the hon'ble member's amendment, if adopted, would leave open the door for collusion to defraud the Government and the District Committees of the cesses due. Taking for illustration the case of an estate in which the recorded joint proprietors are A and B—the former a man of substance—the latter a man of straw, and A's creature.

Immediately a separate account for a share of sudder jumma is opened, A and B will, under clauses 2 and 3, section 44 of the Cess Act, become liable for the cess assessed in respect of the entire estate "in proportion to the amount of Government revenue, for the payment of which their respective shares remain liable." Let us suppose that B has caused a separate account to be opened in his name, accepting a liability for 12 annas of the entire sudder jumma. Then, immediately on the account being opened, A will be liable, say, for Rs. 250 only, and B for the remaining Rs. 750 out of a thousand, which is the entire amount of cess on the estate. B having defaulted for land revenue, the share, in respect of which the separate account is open in his name, is put up to sale; as it is encumbered with a higher amount of land revenue than it can pay, no outsider will buy it, and of course A, the substantial joint proprietor in the estate, will buy the share in, either in his own name, or *benamee* in that of some other man of straw, say C, so as to save the entire estate from being put up to sale for the arrear, but he will only bid the exact amount of arrears due—there will be no surplus profits of the sale to be paid to B, from which the Collector could deduct the Rs. 750 of cess due from B.

So the Collector must proceed to realize the cess from B by the certificate procedure. But B is a man of straw, and long before the certificate is issued, he has made over his moveable property to his sisters, his cousins and his aunts. He has no other immoveable property, and the nazir makes his return—"No assets can be discovered." At this stage, as the section which the hon'ble mover of the amendment wishes to alter now stands, the Collector would enforce the joint liability of A, and proceed to recover the Rs. 750 of cess from him. But if the section is mutilated as the hon'ble member proposes, "the general responsibility of the holders of the entire estate," *i.e.* of A, will have

absolutely ceased from the date on which the separate account of land revenue was opened, and the amount of cesses due will be irretrievably lost to the Public Exchequer and the District Committees, and this game might be played over and over again with perfect safety to A.

The case of collusion between A and B has been here taken as the best for the purposes of illustration, but MR. DAMPIER could assure the Council that a similar danger would exist in cases in which there is no collusion, but in which (B being a man with no other property) the share of the estate, which *bonâ fide* belongs to him, has by private arrangement among the proprietors of the estate been burdened with an undue share of the land revenue demand."

The HON'BLE AMEER ALI said, in reply, that he thought the difficulty suggested by the hon'ble member (Mr. Dampier) might easily be obviated by adding some clause to cover such special and hypothetical cases. Such cases were extremely unlikely to occur in actual practice, and, with the safeguards which the law provided against collusion and fraud, it was impossible to suppose they could occur with impunity. At all events, the great boon which would be conferred on the large mass of proprietors by the omission of the clause in question would compensate for any mischief which in some rare instances, according to the hon'ble member in charge of the Bill, was likely to arise if MR. AMEER ALI's suggestion was adopted. That suggestion was offered from the practical level of those who had to suffer from the working of the Act, and he hoped that it would meet with the approval of hon'ble members. Some portion of the hardship at present entailed upon proprietors would be removed by requiring the Collector to give some distinct notice to the entire body of shareholders in a mehal, so as to enable them to know who the defaulting co-sharers were, and what the amount of the cess in arrears was. He might mention one instance in which, if such a course had been adopted, much hardship would have been avoided. There was one mehal in the Patna district which had been put up for sale for default committed by certain co-sharers in the payment of the cess. This mehal consisted of 12 mouzahs, and was in possession of 20 maliks, and though the property was put up for sale, the majority of the co-sharers were not aware up to this time who the defaulting co-sharers were.

HIS HONOR THE PRESIDENT said he thought the question which had been raised was a very important one, but it hardly came in properly in connection with the Bill now before the Council. The object of this Bill was not to reconsider and to revise all questions relating to the assessment and recovery of cess, but to correct certain obvious errors in the Act which had been discovered in the course of its administration. The question which had been raised was one which had possibly not been considered before; it involved important principles, and could only be decided after careful enquiry from local officers. Acts, such as the Cess Act, were very frequently amended, and another opportunity would no doubt occur for proposing the change suggested. In the mean time, the point could be noted and enquiries could be made from the revenue officers in Behar on the subject. He would therefore suggest the propriety of the hon'ble member withdrawing his amendment on the present

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occasion, leaving it for consideration on the occasion of some subsequent amendment of the Act.

The amendment was then by leave withdrawn.

The HON'BLE MR. DAMPIER postponed the motion which stood in the List of Business that the Bill be passed.

The Council was adjourned to Saturday the 19th March.

Saturday, the 19th March 1881.

PRESENT:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding*,
The HON'BLE H. L. DAMPIER,
The HON'BLE H. J. REYNOLDS,
The HON'BLE H. A. COCKERELL,
The HON'BLE A. MACKENZIE,
The HON'BLE T. T. ALLEN,
The HON'BLE PEARY MOHUN MOOKERJEE,
The HON'BLE KRISTODAS PAL, C.I.E., RAI BAHADOOR,
and
The HON'BLE AMEER ALI.

BURIAL BOARD (CALCUTTA AND ITS SUBURBS).

THE HON'BLE MR. MACKENZIE moved that the report of the Select Committee on the Bill to provide for the appointment of a Burial Board in Calcutta and its Suburbs be taken into consideration in order to the settlement of the clauses of the Bill. He said that the Select Committee had not found it necessary to make any material amendments in the Bill. They had inserted a clause providing for the resignation of Members of the Board by enabling the Lieutenant-Governor from time to time to relieve any Member of the Board nominated by him of his functions as a Member of such Board. The other amendments which the Committee had made in the Bill were merely of a verbal nature.

The motion was put and agreed to.

The HON'BLE MR. MACKENZIE asked leave to postpone the remaining two motions which stood in his name. Finding that no criticisms—in fact no notice—of the Bill had appeared in the public press, he had sent copies to all the leading dissenting clergy in town, and had received from a few of them replies. Briefly, he might say, as far as the replies went, they all approved of the principle of the Bill, and the chief point on which suggestions had been made was that of the constitution of the Board Some of those consulted thought that the Bill ought to provide for a larger proportion of the clerical element on the Board, while one gentleman thought that no clergymen at all ought to be appointed. As these suggestions did not go to the principle of the Bill, the Council would probably find it unnecessary to make any change in its provisions; but he should like to wait another week for further replies to the circular which had been issued.

The motions were by leave postponed.

AMENDMENT OF THE EXCISE ACT, 1878.

THE HON'BLE MR. REYNOLDS moved that the Bill to amend "The Bengal Excise Act, 1878," be read in Council. He said that at the last meeting he explained the grounds upon which legislation was necessary; the Bill had since been printed and circulated, and he need only briefly refer to its provisions. The third section of the Bill contained a definition of "foreign exciseable article," which was drawn up in accordance with a representation which had been made by the Chief Commissioner of Assam. MR REYNOLDS mentioned at the last meeting that these foreign exciseable articles were of two kinds—first, spirituous liquors, which were imported into Assam from places in British India in which no excise law was in force; and secondly, wild ganja, which grew on the hills beyond British India, and was surreptitiously brought into Assam across the frontier. The 4th section of the Bill provided for the regulation of the traffic in such articles in accordance with the wish of the Chief Commissioner. Power was given to the Board of Revenue absolutely to prohibit the possession of such foreign exciseable articles in any quantity whatsoever in the districts or tracts specified in the notification, or to limit their possession to certain specified quantities. The 5th section provided for the difficulty which had been raised by the Board, by omitting the words "for sale" from section 58 of the Act.

The HON'BLE MR. DAMPIER said he observed in the Bill a provision to substitute, for the definition of "spirituous liquor" under the Act, the following words:—

"Spirituous liquor" includes any spirituous liquor imported into India by sea or manufactured in India by any process of "distillation." The only difference between this definition and that for which it was substituted lay in the introduction of the words "by sea," which had a restricting and not an extending effect, excluding from the definition all liquors imported otherwise than by sea. Perhaps the hon'ble mover of the Bill would explain the object of this change in the definition, which was not apparent to MR. DAMPIER.

The HON'BLE MR. REYNOLDS remarked that he did not remember at that time the exact reason why the words "by sea" were introduced in the amendment, but the point might be reserved for consideration in Select Committee.

HIS HONOR THE PRESIDENT said he thought the idea probably was to exclude spirituous liquors imported into British India from Native States. Liquors so manufactured and imported would be included in the definition of "foreign exciseable article" contained in the previous paragraph of the section, foreign exciseable article being there defined to mean any article manufactured or produced at any place beyond the limits of British India.

The HON'BLE MR. MACKENZIE said he believed that the reason for the introduction of the words "by sea" lay in the construction of the later penalty sections. The point could best be considered in Committee.

The motion was put and agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble Messrs. Mackenzie, Allen, Peary Mohun Mookerjee, and the Mover.

AMENDMENT OF THE CESS ACT, 1880.

THE HON'BLE MR. DAMPIER moved that the Bill to amend "The Cess Act, 1880," be further considered in order to the settlement of its clauses.

The motion was agreed to.

The HON'BLE MR. DAMPIER said that since the last meeting of the Council two points had been brought to his notice. The first was in connection with the 42nd section of the Act. That section provided that cess might be paid at the time when rent was payable. He should not himself have suggested the introduction of the explanatory words contained in his first amendment, but that the necessity for such explanation had been suggested to him from two independent quarters. The revenue was due according to the instalments mentioned in the engagement, but, although the revenue was then due, payment of it was not required until a certain last date of payment which was fixed under the provisions of Act XI of 1859: all instalments which had become due before that last day of payment were bound to be paid by that last day, and not before, on penalty of sale of the estate. It was suggested that section 42 of the Cess Act was ambiguous, and that a question might rise whether payment of cess was bound to be made according to the periods fixed in the engagement for the payment of revenue, or by the latest day fixed by the Board of Revenue under Act XI of 1859. The object of the amendment was to declare that the latest day for the payment of cess was the date fixed "under the provisions of section 3 of Act XI of 1859, or of any similar Act at the time being in force for the payment of arrears." His motion therefore was to substitute these words for the words "for the payment of the instalments" in clause (1) of section 42.

The motion was agreed to.

The HON'BLE MR DAMPIER said that his second amendment was suggested from the discussion which took place on his hon'ble friend MR. AMEER ALI'S amendment in section 44 of the Cess Act as to the separation of liability for payment of cess. As the Act stood, when a separate account was open for the payment of revenue, there was a corresponding separation of liability in regard to the payment of cess also. But, although the law provided for the closing of a separate account as regards the payment of revenue, the Cess Act did not provide for closing the corresponding account for the payment of cess in the same manner, and therefore MR. DAMPIER moved the addition to the Bill of the following section :—

"5A. To section 44, the following clause shall be added :—

'(5.) Whenever the separate account of the revenue payable in respect of any share or portion of an estate, as mentioned in clause 1 of this section, shall be closed, the provisions of this section shall cease to have effect in respect of such share.' "

The HON'BLE AMEER ALI said he thought the introduction of the proposed clause unnecessary. As long as a person continued to enjoy the privilege given him by Act XI of 1859 of separate liability for the payment of revenue, he would retain the similar privilege in respect to the payment of cesses conferred upon him by the first clause of section 44 of the Cess Act; but when

the separate account for the payment of revenue was closed, the privilege as to separate payment of cess must cease.

The HON'BLE MR. DAMPIER replied that the hon'ble member himself had in Select Committee let fall a remark to the effect that, as he read the law, when once a separate account had been opened as provided in clause 4 of the section, joint liability of the proprietors of the whole estate could never be resuscitated, and it was that remark which suggested the amendment now proposed of providing expressly for the closing of a separate account for the payment of cess.

The HON'BLE MR. REYNOLDS thought that, though the words might not be absolutely necessary, the addition of the proposed clause was desirable—it seemed to him to make the intention more unmistakeable.

HIS HONOR THE PRESIDENT observed that the proposed amendment would not make any alteration in the law. If there was room for doubt in the mind of hon'ble members, there was probably room for doubt elsewhere.

The motion was put and agreed to.

On the motion of the HON'BLE MR. DAMPIER the Bill was then passed.

The Council was adjourned to Saturday, the 26th instant.

Saturday, the 26th March 1881.

PRESENT:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding*,
The HON'BLE H. L. DAMPIER,
The HON'BLE H. J. REYNOLDS,
The HON'BLE H. A. COCKERELL,
The HON'BLE A. MACKENZIE,
The HON'BLE T. T. ALLEN,
The HON'BLE PEARY MOHUN MOOKERJEE,
The HON'BLE F. PRESTAGE,
The HON'BLE KRISTODAS PAL, C.I.E., RAI BAHADOOR,
and
The HON'BLE AMEER ALI.

AMENDMENT OF THE COURT OF WARDS ACT, 1879.

THE HON'BLE MR. DAMPIER presented the report of the Select Committee on the Bill to amend the Court of Wards Act, 1879, and in doing so he said there were only two points necessary to be noticed now. The minor alterations made by the Committee were sufficiently set out in the report. The first of the two points was the alleged discrepancy between the Indian Majority Act, passed by the Council of the Governor-General, and the Court of Wards Act of this Council. Before the matter was laid before the Select Committee an informal meeting was held, principally to discuss this question. It was purely a question of law, and it happened that, of the four legal gentlemen on whose assistance the Committee were able to avail themselves, two held one opinion as to the construction of a certain expression in the Indian Majority

Act, and these were the two law officers of the Government; while two held the other opinion. The expression in the Majority Act was "every minor under the jurisdiction of the Court of Wards." The opinion of the learned Advocate-General and of the Legal Remembrancer was that this expression in the Indian Majority Act embraced every minor upon whom that Court might stretch out its hands and take charge of his property, if, in the exercise of its discretion, it thought right to do so. If the view of these legal officers was correct, then the way in which the expression was used in the Majority Act had the effect of leaving the Court of Wards to declare whom they should consider to be minors for the purposes of that Act, and therefore there was no discrepancy between the two Acts and no alteration was required in the present Bill. On the other hand the two learned gentlemen opposite (Mr. Ameer Ali and Baboo Peary Mohun Mookerjee) were of opinion that the expression in question in the Indian Majority Act embraced only minors of whose person and property the Court had actually taken charge in the exercise of its discretional jurisdiction. If so, there was certainly some difficulty in reconciling the two Acts; but then this Council had not the power to clear up the doubt by putting an authoritative construction on the words of the Majority Act.

On these considerations, and giving that weight to the opinion of the law officers of Government, who happened to be agreed, which was officially due to them, the Select Committee had not thought it necessary to introduce any provision on this head into the present Bill.

The next point was that the Committee had omitted the proposed section 55A as unnecessary. It was the section by which MR. DAMPIER had proposed to give authority to the Court of Wards to allow any ward to bring a suit, as if that ward were not in charge of the Court. The consideration of this section led the Committee to look somewhat deeply into the general law, and the result was that it was held by those most competent to give an opinion, that, as the law stood, there was no necessity for a specific provision of the nature of the one he proposed; cases such as MR. DAMPIER had intended to meet were already met, Wards of Court, who are not minors, being already under the general law competent to institute certain suits independently of the Court of Wards, and the managers of their estate. That being the general effect of the law, it had not been found necessary to put in any provision to secure it.

He saw one point looming at a distance, regarding which he might perhaps have to propose an amendment. It was this. It had been represented that for the purpose of executing a certificate, the manager of a ward's estate was, under the Public Demands Recovery Act, in the position of a plaintiff decree-holder. Now, after a certificate had been made for the recovery of a certain sum due to the ward's estate, and before it was fully executed and satisfied, suppose the estate of that ward passed away from the jurisdiction of the Court, how was that certificate to be sued out? Who was then legally competent to take such steps as were necessary to go on executing it? That was a question which had been raised. He had in an informal way consulted two authorities on the subject—one said it was as clear as possible; the decree being made, the Collector could go on executing it even after the estate had

passed out of its hands, and the Collector would make over the amount realized to the proprietor who had come into possession of the estate. The other legal luminary said it was palpable that the proprietor in possession of the estate was the successor in title to the manager, and that, under the general law, he would be entitled to take such steps as were necessary for executing these certificates.

This was purely a legal question, and MR. DAMPIER did not like to rush in where the angels feared to tread, and he proposed to give the subject further consideration and to obtain more formal opinions before the next meeting of the Council.

The HON'BLE PEARY MOHUN MOOKERJEE said he had the honour of serving on the Select Committee, but he regretted that he could not agree with the learned law officers of the Government, or the majority of the hon'ble gentlemen of the Committee, in thinking that the Court of Wards Act, or the Indian Majority Act, gave the Court of Wards anything like a prospective jurisdiction with respect to persons who had passed the age of eighteen years and had not completed the age of twenty-one years. He thought that the standards of majority, fixed by the two enactments, related to classes of persons differently situated, and that they did not conflict with one another; but as the majority of the gentlemen who formed the Select Committee were of a contrary opinion, he subscribed to the report of the Committee. But, since signing the report, he had consulted the authorites on the subject, and he had been confirmed in his opinion by the rulings of the highest authorities, he meant of the Privy Council and of a full Bench of the High Court. He thought that a person after he had attained the age of eighteen years was beyond the jurisdiction of the Court of Wards. He stated this simply because he wished it to be understood that he did not subscribe to the opinion expressed in the 2nd paragraph of the report of the Select Committee.

The HON'BLE AMEER ALI said that, as he had the honour of serving on the Select Committee, he might be allowed to say a few words to explain the dissent he had recorded. The reasons which compelled him to differ from his hon'ble colleagues were contained in his dissent, and he was not going to trespass at any length on the time of the Council. He was sorry to find the opinion of the law officers of Government were against him with reference to the meaning which was to be attached to the words "under the jurisdiction of the Court of Wards" in section 3 of the Indian Majority Act. They were of opinion that these words vested in the Court of Wards a prospective jurisdiction, and that consequently there was no conflict between the provisions of Act IX of 1875 and the Court of Wards Act. The opinion of the law officers of the Government was entitled to the greatest weight, but he (MR. AMEER ALI) could not bring himself to agree in the view that the word "jurisdiction" in the Indian Majority Act had a different meaning from the word as used in other Acts. He thought a reference to some of the authorities mentioned already by his hon'ble friend (Baboo Peary Mohun Mookerjee) would show that in every instance in which the question had been discussed the term had been construed to imply an actual and not a prospective and possible jurisdiction.

The Hon'ble Mr. Dampier.

His hon'ble and learned friend the Legal Remembrancer had mentioned to him that in section 11 of the Court of Wards Act and Act XL of 1858 the word was used in the sense which Mr. Allen was inclined to put upon it, but a careful examination of the sections referred to by him had confirmed MR. AMEER ALI in his conviction that the words "under the jurisdiction of the Court of Wards" meant under the actual jurisdiction or charge of the Court of Wards, and did not include persons who had attained their majority under Act IX of 1875. The analogy which was sought to be drawn from the expression "jurisdiction of the civil court" did not appear to him to be correct. The jurisdiction of the civil court was an actual jurisdiction, exercised with reference to all persons and at all times. Everybody was subject to that jurisdiction unless specially exempted, whereas nobody was subject to the authority of the Court of Wards unless specially declared to be so, or the charge of his or her property was taken by the Court of Wards.

The HON'BLE KRISTODAS PAL said, lawyers, like doctors, differed; he did not profess to be a lawyer, but, as a Member of the Select Committee, he took a common-sense view of the question raised. If there was a conflict between the law of the Indian Council and the Court of Wards Act, it was not in the power of this Council to remedy that conflict. The Select Committee had not touched the law one way or another, and had not therefore in any way added to the difficulties which might be at present experienced. Such being the case, he thought the paragraph which had been inserted in the report of the Select Committee would not in any way alter the present position of things. If the Government, in its executive capacity, thought that the two laws ought to be reconciled, it should move the Legislative Council of the Governor-General to amend the Majority Act. But in his opinion it was not competent for this Council to do anything in the matter.

The HON'BLE MR. DAMPIER said, with reference to remarks which had just been made, that he entirely agreed with the hon'ble member who spoke last.

He observed that the hon'ble and learned member who spoke first said more than once that one of the constructions of the Indian Majority Act was held by the majority of the Members of the Select Committee, as well as by the law officers of Government. MR. DAMPIER begged leave to say that he had in this matter pinned his official faith on the opinion of the Government law officers.

He was satisfied that, whichever of the two constructions was correct, nothing that this Council was competent to enact would be of practical use. Any conclusion which he might arrive at as to the correct construction must therefore be a sterile conclusion, leading to no results. He had not therefore thought it necessary to examine the merits of the rival constructions as he would have done had any result depended upon his vote.

The HON'BLE MR. ALLEN said, as one of the Members of the Select Committee, and particularly as one of those by whose advice it acted, he thought it right to state why that Committee had determined to make no change in the Bill in respect to the matter under discussion, and the explanation lay in the answer to the question—who was a minor under the jurisdiction of the Court

of Wards? The difficulty arose not as to the meaning of any words in any Act passed by this Council, but as to the meaning of words used in the Indian Majority Act of 1875, which was passed by the Council of the Governor-General. The words of section 3 of that Act were—

"Subject as aforesaid, every minor of whose person or property a guardian has been or shall be appointed by any court of justice, and every minor under the jurisdiction of any Court of Wards shall, notwithstanding anything contained in the Indian Succession Act, or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before."

The question was as to the meaning of the words "under the jurisdiction of any Court of Wards." The learned Advocate-General's opinion (and the only opinion which seemed to MR. ALLEN the correct opinion) as to the construction of these words was that a distinction must be drawn between the words "under the jurisdiction of the Court of Wards" and the words "under the charge of the Court of Wards." The opinion maintained by his friends on the opposite side appeared to him to depend entirely on the loose way in which the word "jurisdiction" was used in this country. Every person who had any functions to perform was said to have a "jurisdiction," and thus we heard of a dâk-runner's "jurisdiction" and a chowkidar's "jurisdiction," and other "jurisdictions" of a similar kind in which the word was used in a most slovenly manner. But the exact meaning of the word was to signify, prospectively, a possible control, thus every person was under the jurisdiction of that court which had the *dictio juris*—the right of declaring what was *jus* in cases in which he was concerned; therefore the jurisdiction of the Court of Wards must extend to those persons over whose affairs the court had a *dictio juris*, that is to say all those minors who held entire estates paying revenue direct to Government. The qualification therefore was that of every minor zemindar holding an entire estate, whether his property had or had not been taken charge of, he was under the jurisdiction of the Court of Wards: and consequently the Committee could see no conflict between an Act of the Governor-General, which expressly, in the case of persons under the jurisdiction of the Court, extended the age of majority to twenty-one years, and an Act of this Council which stated that in the case of those subject to the Court of Wards, a minor was a person under twenty-one years of age. The expression "under the jurisdiction" occurred in another Act of the Governor-General in Council, namely Act XL of 1858, which made provision for the custody and protection of the property of minors not under the jurisdiction of the Court of Wards, and who did not hold entire estates paying revenue to Government. Section 2 of that Act provided that the care of the persons of all minors (not under the protection of the Court of Wards) and the charge of their property should be "subject to the jurisdiction of the civil court." The expression in that section was almost identical with the expression in the Indian Majority Act, but MR. ALLEN never heard that the section was supposed to refer merely to persons whose property had been already taken charge of by the civil court: clearly, it contemplated the possibility of the property being taken charge of by the court, and not necessarily that it had been actually taken under it. It was not advisable

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to explain the meaning of the words in question by reference to an Act of this Legislature, because it might be said that it was not competent for this Council to amend or explain an expression used in an Act of the Council of the Governor-General. But a case had just been put in his hands which was relied upon by the hon'ble member opposite as giving the opinion of the Privy Council, to the effect that the age of majority for all minors must be taken at eighteen years. The point of the decision on which reliance was placed appeared to MR. ALLEN not to affect this question at all, except in a very remote way, and even there their Lordships of the Privy Council drew a distinction and based their decision on the express words of a Regulation. They said,—

* *Jumoona Dassya* vs. *Bamasoondari Dassya.* I. L. R. 1 *Calc.* 289—295.

"The only remaining point was that taken by Mr. Doyne, to the effect that, although Govind Chunder may have been of the age of discretion according to the Hindu law as prevailing in Bengal, he was still a minor under the 2nd section of Regulation XXVI of 1793, and that under the 33rd section of the prior Regulation, X of 1793, he could not make the adoption without the consent of his guardian. The last-mentioned enactment prohibits a disqualified proprietor from making an adoption, except with the sanction of the Court of Wards, and it has been determined by the sudder court in the case cited—*Anundmoyee Chowdrani* vs. *Sheeb Chunder Roy*—(1) a case which afterwards came here, though not on the same point, (2) that the prohibition applies equally to an authority to adopt and to an actual adoption. But the words of the 33rd section of Regulation X of 1793 would seem to confine its operation to persons who are under the guardianship of the Court of Wards."

(1) S. D. A. (1855), page 218.

(2) Section 9, Moore's I. A, 287.

This objection was overruled it is true, but the basis of their Lordships' opinion was that section 33 of Regulation X of 1793 limited the incapacity to those who were under the *guardianship* of the Court of Wards, that is to those whose property was in charge of the Court of Wards, and to whom the Court of Wards stood in the place of guardian. The judgment went on—

"And we have the judgment of Mitter, J., to the effect that, where a minor is not under the Court of Wards, but has attained years of discretion according to the Hindu law, he is capable of executing such an instrument as this *Rajendra Narain Lahooree* vs. *Saroda Soonduree Dabee* (3) If, then, the case actually turned upon this point, their Lordships' opinion would have been that Govind Chunder was not incapacitated from executing this instrument by reason of his not having attained the age of eighteen years."

(3) 15 W. R., 548.

The question was not then the validity of the adoption, but whether a disqualified landholder could execute an instrument giving power to adopt, and the Privy Council, in thinking that he could, relied on the words of Regulation X of 1793, which limited the prohibition to adopt to those persons who were actually under the guardianship of the Court of Wards. There therefore did not appear to MR. ALLEN to be any difficulty as to the meaning of the words "under the jurisdiction of the Court" in the Indian Majority Act, and even if there was, he did not see how this Council could in any way remove the obscurity, unless, indeed, it should declare that eighteen years was to be the age of majority of minors under the Court of Wards. But, as he had already said, he did not think there was any ambiguity in the words of the Indian

Majority Act, and he thought it very desirable that the age of majority for proprietors of estates paying revenue direct to Government should not be reduced under twenty-one years.

AMENDMENT OF THE EXCISE ACT.

THE HON'BLE MR. REYNOLDS presented the report of the Select Committee on the Bill to amend "The Bengal Excise Act, 1878." He said he did not propose at this meeting to ask the Council to take the Bill into consideration. He would only mention that he had since received a communication, from which he found that the Board were not thoroughly satisfied with the 4th section of the Bill as it stood, and it was possible that at the next meeting of the Council he should have to propose some amendment of that section.

AMENDMENT OF THE CALCUTTA MUNICIPAL CONSOLIDATION ACT.

THE HON'BLE KRISTODAS PAL presented the report of the Select Committee on the Bill to amend "The Calcutta Municipal Consolidation Act, 1876," and in doing so he said the modifications made by the Select Committee were fully set forth in the report, and he need not therefore trouble the Council with a detailed statement of the alterations made. It had been his misfortune to differ from his colleagues on some important points, but he would take an opportunity to notice them when the Bill would be brought up for settlement of its clauses. There were, however, one or two points which he might now notice. One of the most important objects of the Bill was to give power to the Commissioners to take up land for the reclamation of bustees. When he applied for leave to introduce the Bill, he endeavoured to explain the procedure under which a bustee might be reclaimed by the Corporation under the existing law. That procedure, he might say, was twofold. First, the Commissioners were required to serve notice on proprietors of land, calling upon them to carry out certain improvements which might be recommended by their Sanitary Officer; these proprietors might be required to make roads within bustees for the admission of conservancy carts, to introduce drainage and water-supply, to lay out huts in proper order, and to make other sanitary arrangements. If the proprietors did not carry out the orders of the Commissioners, they were competent to carry out such improvements at the expense of the Municipality and to recover the expense afterwards from the owner. That was one procedure. The other mode of procedure was very much the same, with this difference, that the scheme of improvement was not to be brought into operation till the condemned bustee had been reported upon by two competent independent medical gentlemen. If the Health Officer reported a bustee to be particularly unhealthy, and if the Commissioners thought fit, they might call upon two independent medical men to report on the bustee. These gentlemen were required to set forth a scheme of improvement which might partially or wholly be adopted by the Commissioners, who were competent to require the owner to carry out all the improvements they might order. If the owner neglected to carry out the improvements, the Commissioners were competent to carry

them out and to recover the cost from the owner. The expense might be so heavy that, perhaps in some cases, the proprietor of the bustee might not be able to meet it. It had therefore been considered hard to enforce the Act in cases in which the owner might be too poor, or might find the undertaking to be unremunerative. The best course in such cases, he thought, would be for the Municipality to take up the land and pay proper compensation to the proprietor. As BABOO KRISTODAS PAL had mentioned to the Council on the occasion he had referred to, he had pressed this point on the Council when the Municipal Act of 1876 was under consideration, so this was not the first time he ventured to bring the subject before the Council. At that time it was thought that the extensive powers given to the Commissioners by the Act might first be tried, and if they were found to be insufficient, they might be subsequently extended. When introducing the Bill, he read to the Council an extract from a letter of the Government, in which His Honor the present Lieutenant-Governor recommended that the Commissioners might take up land for the improvement of bustees, and sell or lease it as they thought fit in order to recoup themselves. The Commissioners had also come forward with the same suggestion in a letter to the Council, and accordingly provisions had been introduced in the Bill to give the Commissioners the necessary powers. The Select Committee had, however, so hedged in the provision as to prevent the Commissioners from arbitrarily exercising the power or embarking in land speculation. The amended Bill provided that no unhealthy area should be taken up by the Commissioners unless independent medical testimony was obtained as to the unhealthiness of the locality concerned. The bustee must be first reported upon, specially by two competent medical men, before it could be included in any scheme of improvement by the Commissioners under the provisions of the Bill; the Commissioners would then consider the scheme of improvement recommended, and lay it before the Lieutenant-Governor for consideration and sanction, and, after obtaining such sanction, might take measures to acquire the land. Within two years of the acquisition of the land, the Commissioners should either carry out the scheme of improvement at their own expense, or make arrangements for carrying out the improvement by other persons. And within five years from the time of the commencement of the improvement, and seven years from the date of purchase of the land, the Commissioners must sell the land unless the time was extended by special order of the Lieutenant-Governor; so that the Commissioners would not be competent to hold the land they might purchase for the profit of the Corporation. This provision of the Bill would act as a check upon the acquisition and improvement of land, for, as fast as the Commissioners might acquire or improve any land, they would be bound to sell it; they must not hold land for the pecuniary benefit of the Corporation. The object, as he had stated before, was simply to assist the Municipal Corporation in carrying out more effectually the reclamation of bustees. This provision, BABOO KRISTODAS PAL hoped, would be doubly beneficial. In the first place it would assist the Commissioners in carrying out sanitary improvements; in the next place it would help proprietors of bustees, who might not have the means

of carrying out improvements of large magnitude; they would receive fair and sufficient compensation for the land they possessed, but which they were not able to improve. He thought these sections, on the grounds he mentioned, were fair and equitable to all parties concerned, and most important from a sanitary point of view.

The next section to which he would refer was the section about drug shops. He believed there was no difference of opinion on the point that there ought to be some provision for the proper regulation of shops where medicinal drugs were exposed for sale. The Bill provided for the proper registration of drug shops; next, for their proper supervision by the Health Officer of the Town; and thirdly, for the employment of certificated compounders for the dispensing of medicines in those shops. It had been pointed out to him that, as the section had been worded, it would include Indian drugs which were used for the preparation of indigenous medicines, and if certificated compounders were insisted upon for the sale of such drugs, it would offer serious impediment to trade and to the indigenous system of medicine. In order to meet this objection, the Committee had inserted the words "drugs recognized in the British Pharmacopœia, not being also articles of ordinary domestic consumption." It, however, happened that Indian drugs had been included in the British Pharmacopœia which were not articles of domestic consumption; other drugs were also included which were used both for domestic consumption and medicinal purposes in this country. It would be very hard if, by any words in this section, the trade in Indian drugs should be fettered in any way. These drugs were very cheap, they were sold by small druggists, they were used by Indian Kobirajes and Hakeems, and most of them were comparatively innocuous, and if any obstacle were thrown in the way of the sale of such drugs, it would be a serious inconvenience to the public. BABOO KRISTODAS PAL would therefore take the opportunity, when the clauses of the Bill would come up for consideration, to ask the Council to consider whether some explanation should not be attached to the section which might exclude from its scope drugs which might be used for indigenous medicine.

He need not notice the other amendments made by the Select Committee, because they were more or less explained in the report; he would now present the report, leaving the detailed consideration of the clauses of the Bill for the next sitting of the Council.

APPOINTMENT OF A BURIAL BOARD FOR CALCUTTA AND ITS SUBURBS.

THE HON'BLE MR. MACKENZIE moved that the Bill to provide for the appointment of a Burial Board in Calcutta and its Suburbs be considered for settlement in the form recommended by the Select Committee. He had, with the permission of the President, last week, postponed this motion in order to give time for the receipt of further communications to the circular which had been issued. He had during that time received several further replies, and he was happy to say that two of the largest bodies interested—the Roman Catholic community and that of the Church of England—were entirely

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satisfied with the provisions of the Bill as they stood. Practically, he might say, that the Non-Conformists, as far as he had been able to discover, were also satisfied. One or two suggestions had been thrown out, but he did not consider it necessary to make any change in the substance of the Bill in consequence of those suggestions. As the Bill was worded, there was nothing in the section providing for the constitution of a Burial Board to compel the Lieutenant-Governor to appoint only laymen as additional members; it was quite open to His Honor to appoint either laymen or clergymen. That met one objection which had been taken by his correspondents. Another point was this. It was suggested that Non-Conformist bodies should be allowed to elect their own representatives. That, however, appeared hardly practicable, for the Government had no definite knowledge of the number of bodies who claimed to be represented; it would be difficult to lay down rules for the conduct of elections, and, on the whole, it would probably be found best that the power of appointment be left with the Lieutenant-Governor, who would consider the interests of the leading bodies and choose men who might be considered fairly representative. Another suggestion, which had been made, was that all the Government burial-grounds should be placed under the Board. The intention was that all such burial-grounds should be placed under the Board, but the Bill had been made discretionary, because new burial-grounds might be opened out which it might not always be convenient to place under the Board. Therefore MR. MACKENZIE thought that on this point also there should be a discretion left to the Government. The only other suggestion which had been made was as to section 10. Several gentlemen had suggested that all private burial-grounds ought to be brought compulsorily under the jurisdiction of the Board. The Government had not heard how such a provision would be received by the proprietary and managing bodies concerned; and here also MR MACKENZIE thought it would be best that the Bill should be left open On the whole, therefore, he did not see any reason to ask the Council to make any change; but in section 3, he would move to insert, after "Senior Chaplain of St John's," the words "Church in Calcutta."

The motion was put and agreed to.

On the motion of the HON'BLE MR. MACKENZIE the Bill was then passed.

The Council was adjourned to Saturday, the 2nd April.

Saturday, the 2nd April 1881.

PRESENT:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding*,
The HON'BLE G. C. PAUL, C.I.E., *Advocate-General*,
The HON'BLE H. L. DAMPIER,
The HON'BLE H. J. REYNOLDS,
The HON'BLE H. A. COCKERELL,
The HON'BLE A. MACKENZIE,
The HON'BLE T. T. ALLEN,
The HON'BLE PEARY MOHUN MOOKERJEE,
The HON'BLE KRISTODAS PAL, RAI BAHADOOR, C.I.E.,
and
The HON'BLE AMEER ALI.

AMENDMENT OF THE COURT OF WARDS ACT.

ON the motion of the HON'BLE MR. DAMPIER, the report of the Select Committee on the Bill to amend "The Court of Wards Act, 1879," was taken into consideration in order to the settlement of the clauses of the Bill, and the clauses of the Bill were considered for settlement in the form recommended by the Select Committee. He said that, since the last meeting of the Council, he had sent copies of the Bill as it stood to a few Commissioners and Collectors with a view to its being carefully considered before it was finally passed. The result showed that there was nothing of any importance required, but suggestions had been received of a few verbal amendments which he would now proceed to move.

The first of these was in section 1. This being a short amending Act, no short title was required, and the words from "may be called" in line 1 down to the word "it" inclusive in line 4, were omitted.

In section 4 an amendment was made so as to provide for the insertion of the word "sale" before the word "proceeds" in the proviso to clause 1 of section 23 of the Wards Act, and in lines 7 and 8 of clause 2 of the same section, for the words "and all arrears of rent" the words "cesses and other demands and all arrears thereof" were substituted. As the Act stood, when the Collector attached an estate for the recovery of any sum due at the time of releasing the estate from the protection of the Court of Wards, he was empowered to recover only rent and arrears of rent; the amendment would empower him to recover all cesses and other demands recoverable as arrears of revenue.

Further amendments were made in the same section by the substitution in the proviso to clause 2, line 2, of the word "attached" for the word "farmed," and the omission of the words "of such farm" in line 3. The proviso as it stood laid down what was to be done with the proceeds of attached estates if let in farm, but there was no provision as to the mode of proceeding if the estate was managed by the Collector direct; this amendment was to correct that defect.

Verbal amendments were made in sections 5 and 6 of the Bill.

Section 9 was a new section, giving power to the Collector to call for accounts and papers from a farmer within six months after the expiry of the lease; but it had been brought to notice that very often it was made a condition that the farmer should file a jummabundi every year, and it was represented that it would be very inconvenient if, under the law, the farmer could only be called upon to file accounts and papers after the expiry of his lease. It was therefore proposed to confer the power of calling for accounts and papers "at any time during the currency of the lease or" within six months, &c., and the opportunity was taken to make amendment further down the section by repeating the words "accounts, documents, or papers" in lieu of the word "information" which had crept in by a clerical error.

The HON'BLE MR. DAMPIER then moved that the Bill as amended be passed.

The HON'BLE MR. ALLEN said that, before the Bill left the Council, he wished to add a few words on the subject of the discussion which took place at the last meeting of the Council. The fact of his hon'ble friend the mover having disclaimed any opinion of his own on the subject appeared to impose an additional obligation on MR. ALLEN to justify the opinion which he then gave. He must admit that at that time the force of his hon'ble friend's words did not strike him. It was only on seeing the *Gazette*, and finding Mr. Dampier's official faith pinned to him, that he felt the responsibility which the hon'ble member had cast on him. Further, the misapprehension which had been given expression to by the hon'ble gentlemen opposite appeared to be very widespread and not confined merely to those in Calcutta—persons who had been whetting their ingenuity over the circumstances of a particular case. He had lately had a visit from a mofussil pleader, and evidently the opinion considered to be undoubted was that which the member opposite gave expression to; and furthermore, it was not a matter of pure theory, but one of very important practical effect. This pleader mentioned a case with the circumstances of which it was unnecessary to trouble the Council, but which had reference to the disposal of a very large property, and the advice which was then given was entirely based upon that view of the age of minority. Now, on the last occasion, MR. ALLEN'S remarks were very much in the nature of verbal criticism, and he travelled no further than the section itself. But these circumstances led him to look more deeply into the matter, and to go back to the history of majority legislation. The Majority Act of 1875 provided two distinct periods for two distinct classes of persons,—one at the age of 18 and the other of 21. Now, according to the opinion MR. ALLEN was combatting, the distinguishing and determining circumstance which was to decide the class of these two to which any particular person belonged, lay in the fact whether, at the time of attaining the age of 18, the minor was already under the protection of the Court of Wards or not. If he were already under the protection of the Court of Wards, it was admitted that the minority continued till the age of 21, but if the minor had not been taken under such protection, he became, it was said, a major immediately; he was entitled to defy the Court of Wards to spend his money in any way he pleased, and to ruin himself as fast as he liked. Thus, if at the time

of his father's death, a minor was of the age of 17 years and 11 months, if the Collector of the district was vigilant and seized the estate immediately, the minor became incapacited for three years. If, on the other hand, the minor managed to conceal his father's death, or the father died a month later, that minor became *sui juris.* Thus the three years' civil incapacity was made to turn upon the merest accident which had no reference to the mental or moral maturity of the subject, or the responsibilities or dangers he was exposed to. The mere fact of having been a single week under the protection of the Court was, as it were, to carry with it by law the taint of three years' incapacity. This was simply to treat the Court of Wards as if it were a plague-stricken port, the entering of which for the most temporary shelter involved civil quarantine for three years. Now, could it be supposed that any Legislature would attach such consequences to coming under its own Court's protection? It might be true that the Court of Wards had enemies who made light of the training and education which it afforded, but a provision of this nature, however effective as a piece of cruel irony, would be altogether out of place in an Act of the Legislature; and any interpretation which involved such a conclusion carried its own condemnation with it. But the past history of the legislation on majority led to the same opinion. In 1793, when the Court of Wards was established, 15 years was taken as the period at which a minor became competent to manage his own property. This was simply accepting what was supposed to be the Hindu and Muhammadan law on the subject; but inconvenience was very soon experienced in making that the age of majority, and by Regulation XXVI of 1793 the Legislature postponed the period of majority for three years. In the preamble to that Regulation, the reasons which induced the Legislature to do so were sufficiently set out in language of the most sober and weighty kind. For proprietors of entire estates paying revenue direct to Government, the age of majority was fixed at 18 years, but for others no special period was appointed, and they remained, under the general Hindu and Muhammadan law, minors till the age of 15. Act XL of 1858 took their case into consideration, and enacted that all such as were not already protected by the Court of Wards were to attain their majority at the age of 18. MR. ALLEN was aware that there had been in early years diversity of decisions as to the effect of this Act, and that the view taken in the Bombay Presidency appeared to be different from the view taken here, but the question was finally settled by a Full Bench decision of the High Court of Calcutta in 1871, 1 B. L. R., 49. The argument then put before the High Court was very much the same as that which had been put forward in this Council with reference to the Court of Wards jurisdiction. The dispute then was as to the effect of Act XL of 1858, and it was contended that that Act only provided for those who had already come under the control of the civil court, and that, if they had not been brought under the control of the civil court, they attained their majority at the age of 15. The argument which the hon'ble member opposite maintained on the present occasion with respect to the Court of Wards jurisdiction was stated by the then Chief Justice Sir Barnes Peacock in the form of a question, thus: "Then can it be said that

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being a minor, subject to the jurisdiction of the civil court, he is not a minor unless proceedings are taken in the civil court for the protection of his property or for the appointment of a guardian?" The Full Bench decision is the answer to that question. MR. ALLEN would not pretend to give in his own words the effect of that decision, but the question was afterwards raised again in the High Court, when Mr. Justice Phear said: "By that Full Bench decision I understand it to be now settled that in the mofussil, at any rate, all persons (with certain exceptions) who have not attained the age of 18 years are under the disability of minority." Such was the state of the law when the Majority Act of 1875 was introduced, and it would be seen, on referring to the proceedings in the Governor-General's Council in reference to the passing of that Act, that at the time no intention to change the principle of the law was manifested by any person. A very strong opinion was expressed that for all minors of all classes the period of majority should be 21, but for various reasons the Select Committee determined not to adopt this age. They expressly put it that their reason for doing so was that they apprehended there were two classes of minors—one whose majority was attained at the age of 15, and the other at the age of 18; and they feared that a change from 15 to 21 was too great a leap to be taken at once. Therefore they confined themselves to deferring the period of majority in each case by three years. He quoted from Mr. Hobhouse's speech in presenting the report of the Select Committee. Having discussed the proposals made, Mr. Hobhouse summed up in this way: "It was found that after the introduction of the Bill there was only one serious subject of controversy, and that was whether the age of majority should be fixed at 18 or at some later age. We were recommended in a great number of influential quarters to postpone the age to 21, and were referred to many cases in which injury had occurred to young men by reason of their becoming masters of their property at too early an age. So it happened that, when we came to discuss these papers, the object of uniformity seemed to be less important than the object of framing a law suitable for the needs of Indian Society, and we found that if we prolonged the non-age of those who were wards of Court, though we should not altogether follow the recommendations of those who advocated the age of 21, yet we should substantially satisfy their reasons and meet the cases of mischief which they adduced, while at the same time we should avoid so large a change as would be caused by altering the age from that of 15 years or less to that of 21. The broad result is that, setting apart the cases of successions and of European British subjects, we have provided that those who are now minors up to 18 shall remain so up to 21, and that others shall attain their majority at 18." The effect was simply to defer by three years the age of majority in each case.

Madhusudan Manji versus *Debi Gobinda Newgi*, 1 *B. L. R. (F.B.)* 48-54.

Jadunath Mitter versus *Bolye Chand Dutt*, 7 *B. L. R.*, 607-610.

When we came to examine what were the distinguishing circumstances which marked the particular law under which any particular person was to fall, it would be found that it was made in every instance to turn upon the question of the possession of property. The preamble to Regulation XXVI

of 1793 distinctly put it upon the responsibility and dangers to which minor zemindars were exposed at the early age of 15 years. That principle was also accepted by the Legislature in 1875, and in continuation of his speech, Mr. Hobhouse observed that, as a fact, no direct inconvenience would follow their refusal to make 21 the age of majority for all, because the richer classes were the only ones who would ever have occasion to appeal to the Majority Act practically, and that, in providing the age of 21 years in their case, the Council were meeting the whole difficulties which were likely to arise. Mr. Hobhouse said—

"But here it seems to me that we walk on thoroughly safe ground. We are dealing with a class whose non-age, if their fathers are not living, is already prolonged beyond that of their neighbours, or liable to be so prolonged by a simple application to a court of law."

Mr. Hobhouse, at all events, supposed that they were covering not merely those who were already under guardianship, but those who might be brought under guardianship by a simple application to a court of law. From first to last the Legislature had, in determining the period, considered, first, the probable capacity of the minor; and secondly, the responsibility which he was likely to have to undertake, and according to those principles, and not any mere accident as to whether he was already under the protection of the Court or not, the point was determined.

Such being the state of things as provided for by the Majority Act, Mr. Allen now came to the present Court of Wards Act. It provided that, for the purposes of the Act, every person under the age of 21 years was a minor. He thought it was not open to the Council to modify that section in any way. The Majority Act provided specially for those under the jurisdiction of the Court of Wards, and this Council could not do otherwise than make 21 years the age of majority for the purposes of the Court of Wards Act. On the last occasion he suggested that the only way to escape the supposed difficulty, if there was a difficulty, would be to reduce the age of majority to 18 years in the Wards Act, but he now retracted that remark, for, by doing so, this Council would then indeed be going against the Majority Act. If the Wards Act declared "minor" to mean every one under 18 years, it would thus declare a ward reached majority at 18 years; while the Majority Act itself distinctly provided that (even according to the view of his opponents) a ward should reach majority at 21 years, *and not before.* To make such a provision would be indeed *ultra vires* of this Council. But the practical question involved in and underlying all this was whether one whom the Wards Act declared a minor, he being under the age of 21 years, might dispute the control of the Court of Wards if he had attained the age of 18 before the Court had assumed the right of guardianship over him. The Wards Act legally bound every person in Bengal, and if any person was so ill-advised as to attempt to go into the civil court to shake off that control, his only possible chance of success would be by inducing the Court to declare that this Council had no power to fix 21 as the age of majority for minors subject to the jurisdiction of the Court of Wards. It was true that the courts in this country had

from the commencement lent too ready an ear to the argument of *ultra vires*, and had been so indiscreet as not to confine the acceptance of the argument to cases in which orders of the Executive Government were impugned, but had also applied that principle to render void Acts of the Legislature; but in every case in which an Act of the Legislature had been declared to be *ultra vires*, he believed it would be found the Superior Court had set things right. In no one case had this argument, at least as regards legislative Acts, been upheld; and if any ward or any minor should go into Court to press this argument, it would not be the Court's duty to be astute to discover that there was conflict between the two Legislatures, and further, any Court would doubtless give full effect to the consideration that the minority had been extended to 21, not for the destruction, but for the protection of the ward. The only result which MR. ALLEN could anticipate from a ward coming into court for any such purpose would be that by so doing he would furnish an additional illustration of his incapacity and undue readiness to be led away by evil advisers, and thus justify the act of the Legislature which had deferred his majority to the age of 21 years; but as to the result of any such application, MR. ALLEN did not suppose there could be the smallest doubt. The Supreme Government had already considered the Court of Wards Act of this Council, it had accorded its sanction to it, and it would not have done this if it was in reality in opposition to an Act of its own Council. But so far from the Wards Act being in opposition to the Indian Majority Act, it was only in the Court of Wards Act that the intention of the Supreme Legislature had received its complete accomplishment. These remarks, in an insufficient and feeble manner, he admitted, covered arguments which yet he believed could never be controverted.

The HON'BLE THE ADVOCATE-GENERAL said that on the last occasion on which this question was considered he was absent from the Council, but the hon'ble mover of the Bill correctly represented the Advocate-General's opinion which was entirely in consonance with that which had been expressed by Mr. Allen. The ADVOCATE-GENERAL was glad to observe that Mr. Allen had further confirmed that opinion by a considerable amount of research in tracing the history of the Act itself. The opinion which the ADVOCATE-GENERAL had formed at one of the consultations of the Select Committee was one as to which he was perfectly clear, and he did not think any reasonable doubt existed as to the meaning of section 3 of Act IX of 1875. The words "under the jurisdiction of any Court of Wards" made it perfectly clear that it was entirely unnecessary, for the purposes of section 3, that the minor should be actually under the protection of the Court of Wards, or that his estates should be vested in the Court. An infant under the English law was always under the jurisdiction of the Court of Chancery, although his property had not been taken possession of by the Court nor a guardian appointed. It could not be disputed that he would continue under the Court of Chancery until he had attained the age of 21. The attempt at present made, if successful, would be a retrograde movement to the state of things which existed before Act IX of 1875 was passed. The ADVOCATE-GENERAL remembered very distinctly giving a great

deal of time to the consideration of the matter in consultation with Mr. Clarke, the then Secretary in the Legislative Department, and it was because section 3 of the Indian Majority Act used the expression "under the jurisdiction of the Court of Wards," that it was determined to frame the section in the Wards Act as had been done, namely, that a minor should, for the purposes of the Act, be a person under the age of 21 years. The Wards Act was drawn so as to make the two Acts read together. He did not think that any reasonable doubt existed as to the construction of the Act, and even if it did, he did not think this Council could in any effective manner interfere with the provisions of section 3 of the Majority Act, and if his hon'ble friends thought that the word "jurisdiction" in that Act meant something different to the construction put by the Legal Remembrancer, they must go to a court of law for an authoritative interpretation of the meaning of the Act. There was a great case pending a short time back in regard to which, if the opinion entertained by the learned Legal Remembrancer and himself and the majority of the Committee was wrong or defective, proceedings would have been taken to set the matter right. He was not at liberty to mention the case further; but he knew that in that case sufficient and careful legal advice was taken on the subject. As far as he could see, there did not appear to be the smallest doubt that the opinion which had been expressed by MR. ALLEN was perfectly correct, and he thought this Council was greatly indebted to the hon'ble gentleman for the able manner in which he had this morning given expression to his views.

The HON'BLE AMEER ALI said that, as he had recorded a dissent to the report of the Select Committee on the Bill to amend the Court of Wards Act, he felt bound to say a few words after the remarks which had fallen from the learned Legal Remembrancer and the Advocate-General. He was under the impression that this question had been dropped and would not be raised again. He had merely mentioned the difficulty because it had suggested itself to him and to other professional gentlemen. He wished to assure hon'ble members that nothing was further from his intention than to reduce the age of majority; on the contrary, he would make the age uniform with reference to all persons, and remove the difficulty in that way. Instead of allowing the age of majority to fluctuate from 18 to 21, depending upon the circumstance whether a person was possessed of estates paying revenue to Government or not, he would have a uniform rule substituted in respect of all persons. But the question which he had raised involved a practical difficulty which had its origin from a conflict of words in the two Acts. He did not wish to enter into a technical discussion on the subject, and he was obliged to his learned friend for going into the history of legislation as to the majority of minors. But the question remained—what meaning was to be attached to the words "jurisdiction of the Court of Wards?" He was bound to attach the greatest weight to the opinion of the Government law officers, but he wished to suggest one difficulty which had occurred to him as to the meaning of the word "jurisdiction." The hon'ble gentlemen seemed to think that the meaning to be attached to the expression implied a prospective jurisdiction. He did not suppose they contended that the jurisdiction of the Court of Wards was a larger jurisdiction than the jurisdic-

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tion of the civil courts. He did not think it could be contended that, under the Indian Majority Act, the civil court could appoint a guardian *ad litem* to a person who had attained the age of majority; but if his learned friend's opinion was correct that the Court of Wards could take possession of the estate and appoint a guardian to a person who had not completed 21, but had attained the age of 18, it seemed to MR. AMEER ALI that if such a person could be reduced to the jurisdiction of the Court of Wards, then that Court had a larger jurisdiction than the civil court. That, he believed, would reduce the whole contention to an absurdity. Then there was another question. If it was contended that the civil court had the same jurisdiction as the Court of Wards, then it would follow that a person would be subject to two concurrent jurisdictions the whole time, and if he was subject to the jurisdiction of the Court of Wards until the age of 21, then the law of limitation as to persons who completed the age of 18 years would not apply. Taking a common-sense view of the words used by the Indian Legislature, it seemed to MR. AMEER ALI hardly possible to avoid landing oneself into an absurdity if a prospective meaning were attached to the words "jurisdiction of the Court of Wards." That was his reason for having raised this question. If the Council had not the power here to amend matters, a suggestion might be made to the Supreme Legislature for avoiding the difficulty, or some words might be added to section 27 of the Wards Act to effect the same object. It was not, however, for him to make any such suggestion.

BABOO PEARY MOHUN MOOKERJEE said that, although the discussion was at the present moment a sterile one, he wished to remark that the Court of Wards was an institution very different from the English Court of Chancery. Here the institution owed its origin to the solicitude of Government for securing its revenue, but in the case of young men who might possess hundreds of thousands if not millions of rupees in a bank, there was no institution which took care of such persons and prevented their squandering away their property, although it was a property which was much more easily dissipated than landed property. But in the case of minors who possessed property paying revenue to Government, the Court of Wards took care both of the person and the property of the minor. It was no doubt a benevolent institution, but still it was an institution which owed its origin to the desire of Government to see that the revenue due from the estates of minors was secured. He thought therefore that the policy of the law, as enunciated by the hon'ble and learned members opposite, did not hold good with reference to all minors in this country; the case of a minor, however rich he might be, who did not possess landed property, was quite different from that of minors who had such property, and therefore there was no force in the argument based on an analogy between the Court of Chancery in England and the Court of Wards here.

HIS HONOR THE PRESIDENT said that, having regard to the difficulty which was alleged to exist as to the interpretation of the two Acts, he thought the Council was indebted to the hon'ble and learned member for having raised this question and having given an opportunity to the law officers of Government to show, as they had done to HIS HONOR'S entire satisfaction, that no such

difficulty really existed as that which had been suggested. The question seemed to be a very simple one. Part II of the Court of Wards Act described the constitution and the jurisdiction of the Court. With regard to its constitution, the Act said that the Board of Revenue was to be the Court of Wards, and its jurisdiction was declared to extend to the person and property of persons declared to be minors; and a minor was defined to be a person who had not completed the age of 21. The Court of Wards was declared, under section 6 of the Act, to have jurisdiction over all such persons. The meaning of the term "ward" was also to be gathered from the next section of the Act. That section provided that "whenever the sole proprietor of an estate, or all the joint proprietors of an estate, are disqualified as provided in the last preceding section, the Court shall have power to take charge of all the property of every such proprietor or joint proprietor within its jurisdiction."

If the word "jurisdiction" was to be interpreted, as the learned gentleman had contended, as applying only to persons whose estates had actually been brought under the charge of the Court, then the section would be absolutely meaningless. He thought the Acts were really quite clear, and that there was nothing which could not be reconciled between the Majority Act and the Wards Act.

The motion was then agreed to, and the Bill as amended was passed.

AMENDMENT OF THE BENGAL EXCISE ACT.

On the motion of the Hon'ble Mr. Reynolds, the report of the Select Committee on the Bill to amend "The Bengal Excise Act, 1878," was taken into consideration in order to the settlement of the clauses of the Bill, and the clauses of the Bill were considered for settlement in the form recommended by the Select Committee. The second section of the Bill, he said, repealed section 64 of Bengal Act VII of 1878, which had been rendered superfluous by section 9 of the Bill. Section 5 gave power either to prohibit absolutely the possession of certain foreign exciseable articles, or to limit such possession to certain specified quantities. The former alternative had been introduced at the request of the Chief Commissioner of Assam, who represented that he thought it of great importance that he should have the power of preventing the introduction of hill ganja into the province under his administration. By section 7, the words "for sale" were omitted from section 58 of the Act, and certain words were introduced at the end of the section to make it clear that the permission given by section 17 of the Act to possess certain quantities of different exciseable articles was not intended to authorize the introduction, into an excise circle, of spirituous liquors manufactured at another place, even though the quantity introduced might be within the limit allowed under section 17. The alteration in section 10 was of entirely a verbal nature. On going through the Act, it was observed that, as the first clause of section 75 was worded, it might be thought that "the seizure and confiscation" were to be made by the same officer, but no such effect was intended, because the Act distinctly declared that confiscation could only be made after adjudication by a Magistrate.

The President.

The HON'BLE MR. REYNOLDS then moved the following amendment, namely, that section 4 be omitted from the Bill, and the following section be substituted in its place:—

"In the last clause of section 9, for the words, 'and permit the manufacture of such liquors in distilleries established under section 7,' the following shall be substituted:—

"Nothing in this section, or in section 7, shall be held to debar the Collector, with the sanction of the Board, from granting a license for the manufacture of spirituous liquors after native processes in a distillery established under section 7."

It was represented by the Board of Revenue that though the wording of the last clause of section 9 of the Act of 1878 was not very happy, the clause had a meaning which was of such importance that they would prefer the provision remaining in the Act in some form. The Board had already in two instances authorized the manufacture of country spirits in distilleries established under section 7 for working after the European fashion, and though it might not be absolutely necessary that the law should specifically declare that the Board might grant licenses for such a purpose, the Board thought it desirable that the power should be vested in it by law. MR. REYNOLDS therefore moved this amendment.

The amendment was agreed to.

On the motion of the HON'BLE MR. REYNOLDS, the Bill as amended was then passed.

AMENDMENT OF THE CALCUTTA MUNICIPAL CONSOLIDATION ACT.

ON the motion of the HON'BLE KRISTODAS PAL, the report of the Select Committee on the Bill to amend the Calcutta Municipal Consolidation Act, 1876, was taken into consideration in order to the settlement of the clauses of the Bill, and the clauses of the Bill were considered for settlement in the form recommended by the Select Committee.

On the motion of the HON'BLE KRISTODAS PAL the following clause was added to section 13 of the Bill:—

"In the same section, after the word 'rates' the words 'and fees' shall be inserted."

The HON'BLE KRISTODAS PAL said that at the last meeting of the Council he had stated that it had been his misfortune to differ from his hon'ble colleagues in the Select Committee on the subject of the provision relating to the extension of the water-supply to the Suburbs. The section, as framed by the majority of the Committee, went, he thought, beyond the original scope of the Bill, for, when the Bill was introduced, it was not intended to extend the water-supply to other environs of the Town than the Suburbs. But as the section now stood, it gave power to the local Government to extend the water-supply to the environs of the Town without limiting the same to the Suburbs, and the proviso declared:

"Provided that the Commissioners may, with the sanction of the local Government, assess a separate and distinct water-rate upon any portion of the environs, not being more than the maximum rate leviable under the Act. The Commissioners may require the Commissioners of *any* Suburban Municipality to arrange for the assessment and collection of the water-rate within any tract belonging to such Municipality."

Read this proviso in the light of the remarks made by the majority of the Select Committee. They said:

"If the local Government is empowered to declare any portion of the environs to be part of the Town for the purposes of the water-supply, all the legislative sanction necessary will be given. The Government will then be in a position to act as supreme arbitrator between the Calcutta Corporation and the Suburban Municipalities."

Now, reading the two together, one could not resist the conviction that the amended section covered a much wider area than what it was the original intention to embrace. He for one did not believe that the Government did intend to assume such large powers; his impression was that the object of the Government was to limit the operation of the proposed law to the Suburbs only, by giving the inhabitants thereof the benefit of the Calcutta water-supply. If he was correct in this interpretation of the intention of Government, he hoped necessary alterations would be made in the Bill to limit the extension of the supply to the Suburbs only. If the environs of the Town were included, an indefinite and enormous burden would be imposed upon the Town.

With regard to the general question of the extension of the water-supply to the Suburbs, he wished to declare at the outset that he was not in the least opposed to that measure. All that he wanted was that it should be extended upon fair and equitable principles; that the Calcutta Corporation should not be made to suffer any loss for the sake of the advantage which might be conferred on the sister Municipality; that it should be a matter of fair exchange. But if the Council would carefully compare the section as it stood in the amended Bill with the section as it stood in the original Bill, they would find considerable difference between the two. In the amended Bill power was given to the local Government to determine to what portion of the environs of the Town the extension of the water-supply was to be sanctioned. In the original Bill the initiative was left to the Calcutta Corporation. When this amendment was introduced, he was told that this enabling provision had been drawn on the lines of the present Municipal Act, which empowered the Lieutenant-Governor to extend the drainage sections to the Suburbs. He wished it to be understood that there was a material difference between the enabling power given to the local Government under the drainage section, and that given under this section. It was never intended, when the drainage section was inserted in the Calcutta Municipal Act, that the drainage system should be extended to the Suburbs to any large extent. The object was simply to enable the Commissioners to extend the benefits of the Calcutta drainage to persons dwelling on the other side of the Circular Road. That section had been on the Statute Book for nearly eighteen years, and the Government had never thought it necessary to extend it to the Suburbs. But, on the other hand, the Calcutta Commissioners had of their own accord allowed persons, living on the other side of the Circular Road, to connect their houses with the Circular Road sewer. Thus the operation of the drainage section had been very limited, but it was well understood that, under the section proposed in this Bill, a considerable portion of the Suburbs would be brought within the

The Hon'ble Kristodas Pal.

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scheme of the Calcutta water-supply; in fact, the avowed object was to take active measures for the extension of the Calcutta water-supply to the Suburbs. It could not therefore be contended for a moment that the power given under this section would not be largely exercised for years to come. Such being the case, when they saw that the circumstances connected with the two matters under notice were so distinct and different, they ought to consider whether the Calcutta Corporation should not have the initiative, as it would have to bear the money responsibility. It should be borne in mind that this was not simply a question of law, but that it was a question of money. It was not simply a question whether the Government should have the power or not, but it was a question whether the Government should exercise the power if the Suburban Municipality was not in a position to make a fair and full contribution for the benefit they wished to enjoy. BABOO KRISTODAS PAL contended that before the obligation for the extension of the supply was made imperative upon the Calcutta Corporation, that body was entitled to enquire and satisfy itself as to whether there would be a sufficient surplus of water after meeting the wants of the Town for sale to outsiders, and whether the price which the Suburbs might be prepared to pay would cover all costs. Hence, it was necessary that the initiative should be left to the Corporation, who, when necessary, should move the local Government to bring the provision of the law into operation.

Then, the majority of the Committee admitted that the Suburban Municipality could not afford to pay more than 6 per cent. They said: "But we restrict this to the maximum already allowed by the Act, as that appears to us, on the figures available to us, not only as much as the Suburbs ought to bear, but as much as they can possibly afford to pay." So that the Committee had not considered whether the Suburban Municipality ought to pay more or not, but they thought that they could not afford to pay more than 6 per cent. It was not quite correct to say that there were no figures before them to show whether a 6 per cent. rate would be sufficient or not. The dissent which he thought proper to record gave the figures. But apart from the question whether the Suburbs should pay a higher rate or not, the Select Committee thought that they could not pay more. If that was the conclusion at which the Select Committee had arrived, he did not see with what consistency they recommended that the Calcutta Municipality should be compelled to extend the supply of Calcutta water to the Suburbs. For when power was given to the local Government to declare the Suburbs a part of the Town for purposes of water-supply, the Municipality would have no option but to carry out the orders of Government.

Some discussion took place in Select Committee as to the size of the main. Now, he stated to the Council, when he had the honour of introducing the Bill, that if the Government conceded the reduction of contribution towards the Sinking Fund from 2 to 1 per cent., the difficulties about the 62-inch main would be solved. He said he for one would support the introduction of the 62-inch main; he did declare that, as the Government had been pleased to concede the reduction of the contribution to the Sinking Fund, the

62-inch main should be adopted. It might be a question whether the 62-inch main would be necessary for the purposes of the Town only, or whether it would suffice for both the Town and Suburbs. Individually, he thought that a 42-inch main would double the present supply, but others held that a 62-inch main would be required, as the wants of the Town were rapidly growing, and a 42-inch main would not be sufficient a few years hence. One thing was, however, clear, that if a 62-inch main was required for the Town, then the Town would not be in a position to give water to the Suburbs without the addition of another main. Even if at present the 62-inch main should yield sufficient water for the Town and Suburbs, a few years hence it might be necessary to have another main to meet the growing wants of the Town, and in that case the Town would be put to additional expenditure for increased supply. That was one view of the question. As regards the other view, which he had endeavoured to represent, it was quite clear that if a 42-inch main would double the present supply, the increased size of the main would benefit the Suburbs, and it was but reasonable and just that the Suburbs should pay a portion of the cost of the increased size. From whatever point of view they considered the question of the main, they would find that the cost of the works and the working expenses and other charges would be so large that a maximum 6 per cent. rate recommended would not be sufficient to meet the total cost, and the result would be, as he had endeavoured to show, that the Town would have to make up the deficiency on account of the Suburbs. But, said the majority of the Committee, the Government having conceded a reduction of the contribution towards the Sinking Fund, the Corporation ought to pay the extra cost. Now, he for one could not for a moment admit that, when the Government was pleased to make the concession, it ever made it a condition that the benefit of reducing the contribution should go to make up the deficit of the Suburbs for the extension of the water-supply. The question of the reduction of the contribution towards the Sinking Fund was put upon two grounds—firstly, that the tax-payers of Calcutta were burdened with very heavy taxation; and secondly, that the 2 per cent. contribution fell chiefly upon the present generation of tax-payers, which was not equitable; but the Government never told them that if the contribution was reduced, and the water-supply extended to the Suburbs, the Suburban rate-payers should be relieved of any portion of the cost of the extension of the supply. He would read to them an extract from a letter from the Government of Bengal to the Government of India, recommending the concession of a reduction of the contribution towards the Sinking Fund. It was as follows:—

"The Government of India are aware of the great importance of filling up the numerous filthy tanks which have hitherto been the cause of so much disease in the town; but the completion of this work depends upon the increase in the supply of river water for the use of the people. The Corporation are now considering a scheme for largely increasing the supply of water and extending it to the Suburbs, and the Lieutenant-Governor proposes to amend Act V (B.C.) of 1876, so as to give the Suburban Commissioners power to levy a water-rate to cover the expenses incurred on their behalf by the Calcutta Municipality. The work in contemplation will be of such a nature as to last long beyond the present generation. The drainage works, too, are essentially of a permanent nature, and their

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benefits will extend to posterity; on the other hand, there is no ground for apprehending any decline in the prosperity of Calcutta within any period to which reasonable anticipation can extend. Municipal taxation in Calcutta is very high, and the Lieutenant-Governor believes that any increase in the rates would interfere seriously with the progress of the town. Only once during the ten years, 1870 to 1879, did the aggregate rate fall below 16 per cent., and in four of these years it was 18 or 18½ per cent. It is a question whether, even now, the population of the town is not less than it would be if the rate of municipal taxation were lighter. In the Suburbs, taxation is also high, and it is represented that, if the rate to be levied is to include provision for a 2 per cent. Sinking Fund contribution, the scheme will probably have to be abandoned. Under these circumstances, the Lieutenant-Governor proposes to make provision in the amending Act for a Sinking Fund contribution of one per cent. only on all public loans raised for water-supply, on the understanding that the Municipal Commissioners of Calcutta determine to lay a 62-inch main conduit from Pultah; and he would make similar provision with regard to loans for drainage works. He trusts that the Government of India will signify their approval of this measure."

Now, there was not one word in the letter to show that, if this concession was made, it would be a sort of set-off against any deficiency in the Municipal funds of the Suburbs on account of water-supply. He submitted that he was quite within the four corners of the Government letter he quoted when he said that, while the Calcutta Corporation should adopt a 62-inch main, it should not be charged with any portion of the cost of the supply to the Suburbs.

Then, he had been told by the Select Committee that the Government had heretofore much assisted the Calcutta Commissioners in carrying out the water-works, and that it had therefore a right to expect that the Commissioners should show some consideration to the Suburbs. He for one readily acknowledged that the Municipality had received assistance from the Government in the prosecution of the water-works; but it seemed to him, and he thought it would be admitted that, as Calcutta was the metropolis of the Empire, there was an inherent obligation on the Government to support the Metropolitan Municipality in carrying out improvements which would make the capital city worthy of the residence of the highest personages in the land. He would not raise the question whether in all matters the Government had been liberal to the Municipality, he meant in its financial relations with the Municipality; but while he acknowledged with gratitude the assistance the Municipality had received from the Government in the execution of the water-works, he could not for a moment admit that that assistance was rendered with any stipulation whatever that the Municipality should in its turn extend the water-supply to the Suburbs. If such a condition had been imposed, the Corporation would have considered at the time whether they should have borrowed the money from the Government or gone to the public for the necessary accommodation.

He had been surprised to observe that an impression prevailed in certain quarters that there was jealousy between Calcutta and the Suburbs. He for one denied that any such jealousy existed. The Calcutta Corporation had never hesitated to lend the benefit of its own works to the Suburbs whenever they applied for it. Not many years ago the Suburbs were allowed to discharge their sewage into the Circular Road sewer, and even now the houses lying on the other side of the Circular Road

were allowed to be connected with the sewers; and with regard to water, it was sold to the inhabitants of the Suburbs at a very small charge; indeed, it was notorious that the Suburban people did make use of Calcutta water. The question was, however, whether, taking all these facts into consideration, the circumstances of the Calcutta and Suburban Municipalities were such that they could go together in partnership for the purposes of the water-supply. He saw that in the last annual report of the Suburban Municipality this question was discussed, and the Suburban Commissioners frankly stated that the differences in the condition of the two Municipalities were so great that they could not be fairly yoked together for the purposes of water-supply. He would read an extract from their last administration report. The Suburban Commissioners said—

"These drawbacks are not sufficiently considered by those who unthinkingly clamour for a water-supply like that of Calcutta, and it is not at all unusual for them to remark: 'They have got water-pipes in Calcutta, why don't we have it in the Suburbs?' It requires very little discrimination, however, to understand that what is practicable in a compact area like the city, consisting of some five square miles of closely built, highly rented valuable properties, and with a large well-to-do rate-paying population, may be financially impracticable in a semi-rural suburban township covering four-and-twenty square miles with a scattered and poor population inhabiting property bearing a comparatively low rate of assessment."

The Suburban Commissioners thus distinctly admitted that the differences in the condition of the two Municipalities were such that it was not practicable, financially, to extend the water-supply to the Suburbs. He endeavoured to show in his dissent that a 1 per cent. rate in Calcutta meant Rs. 1,30,000 per annum, whereas a 1 per cent. rate in the Suburbs meant less than Rs. 25,000; so that, practically, it came to this, that a 6 per cent. water-rate in the Suburbs would yield only as much as a 1 per cent. rate in Calcutta. When such was the difference in the condition of the two Municipalities, was not it preposterous to say that the maximum rate which was levied in Calcutta should also be levied in the Suburbs? An equal rate for equal benefit to the Town and Suburbs, he submitted, was a misnomer. Taking all these things into consideration, he proposed the following amendment, namely that the following section be substituted for section 15:—

"15. After section 160, the following section shall be inserted, namely—

"The local Government may (on the application of the Municipal Commissioners of Calcutta) determine what portion, if any, of the Suburbs of the Town shall be included in the said system of water-supply, and may declare the boundaries thereof in the *Calcutta Gazette*, and for the purposes of the water-supply, the land within such boundaries as aforesaid shall be deemed to be part of the Town.

"Provided that the Commissioners may, with the sanction of the local Government, assess a separate and distinct water-rate upon any such portion of the Suburbs, calculated on a scale sufficient to include interest upon all capital expended in the construction of the works necessary for the purpose of extending such water-supply, together with all charges for maintenance, supervision, and renewal of the same. The Commissioners may require the Commissioners of the Suburban Municipality to arrange for the assessment and collection of the water-rate within any tract belonging to such Municipality, and in that case the Suburban Commissioners shall have all the powers of the Commissioners for the purpose of such assessment and collection under the Act."

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The Hon'ble Mr. Mackenzie said—

"This question of the water-supply has now been under the consideration of the Corporation for over two years, and the multitude of Municipal Counsellors has not as yet, at least so far as I can see, evolved much practical wisdom. They have been discussing it in meeting, and discussing it in Committee; referring it to experts and sitting in judgment on their referees; chaffering with the Suburban Municipality, and disputing with one another; repudiating their Chairman, and promising reports to Government; with all their usual persistence and energy: but somehow we seem to be as far off as ever from any satisfactory settlement. I confess, Sir, that I for one do not altogether wonder at this result, or lack of result. I cannot see how any complete solution of the complex problem involved could ever be arrived at by the discussions of a heterogeneous body of amateurs, such as the Calcutta Commissioners (when dealing with a matter of this kind) really are. Some of them may perhaps object to being classed as amateurs in respect of any portion of their work. The Corporation, no doubt, has on its Board many able men, who give much of their time to doing what is in their judgment best for the town; but unfortunately the determination of important matters is not always left to those best qualified to deal with them. Everybody wants to have a hand in everything that goes on: and it would really appear as though many of the Commissioners claimed, in virtue of their municipal election, to have become honorary but qualified members, not merely of the Institute of Civil Engineers, but also of the College of Physicians, the Society of Actuaries, the Incorporated Law Society, and numerous other similar bodies. There is no professional matter, however petty, or however large, on which these gentlemen do not aspire to guide and instruct, reprove, rebuke, and exhort their responsible advisers. Even the influence and good example of my hon'ble friend, the mover of this amendment, to whom both the Town and the Government owe many debts of gratitude, for much good work and terse business-like speech, has not sufficed to check in some quarters this tendency to waste time in talk. Yet surely of all others this question of the water-supply was one to be determined, not by conflicting votes and party divisions, but by the comprehensive advice of the best professional talent available to Government. What the Municipality might well have done was this. It might have determined in a general way, from its local and special knowledge, wherein the present scheme of water-supply comes short, and to what extent. It might have indicated what were the wants yet remaining to be supplied. It might have settled the amount of money that it was able and willing to spend upon the whole. And, then, it might have invited the Government to assist it by lending the services of its best men to draw up, in consultation with the Municipal Engineer, a complete and well co-ordinated scheme for meeting the wants of the Town. That scheme the Commissioners should have accepted and carried through.

The hon'ble member talks as though there were in existence somewhere a unique and complete scheme, round which all this discussion must centre; and he refers us to the figures embodied in his dissent from the Select Committee's report, as statistics regarding which there can be no possible

doubt. I have gone through all the papers available with considerable care, and I find there no such complete and well-reasoned scheme, as I should have expected at this stage of the Commissioners' deliberations. I find only a conflicting farrago of suggestions and alternative schedules of works; nothing like an argued examination of this important and complicated question in all its bearings.

I must trouble the Council with a somewhat lengthy review of the history of this matter, in order to vindicate my contention that the section, as framed by the Select Committee, meets fairly and equitably the true requirements of the case.

Mr. Kimber, the Municipal Engineer, started off in 1878 with a scheme which dealt only with the extension of the filtered water-supply, but provided for the inclusion of the Suburbs. He proposed to raise the daily maximum supply from eight to 20 million gallons, giving four millions of that to the Suburbs. In his report Mr. Kimber remarked—

"The health and prosperity of the Town greatly depend upon the condition in these respects of its Suburbs, and the suburban population must, to a great extent, be considered as inhabitants of the town, carrying on their trades within, though living without it. A portion of this population already obtains its supply, though a too limited one, from the standposts at Hastings, and along the Circular and Baug Bazar Roads" (*i. e. gratis*), "and the people, as a rule, appear well-disposed to pay for the privilege. It is therefore as politic, necessary, and economical a measure to include the Suburbs in the new arrangements, as it would be selfish, churlish, and even suicidal to refuse such a position." I trust that this Council will in the end see its way to saying Amen to Mr. Kimber.

Well, this scheme was deemed too costly for both Town and Suburbs, the total figure amounting to over 59 lakhs of rupees. The annual charge to the Suburbs alone would have been Rs. 1,80,000, requiring a rate of nearly 7½ per cent. to cover it. The Suburbs therefore withdrew from all connection with the matter for the time, and the Calcutta Commissioners on the 17th May 1879 took up the question, and discussed it thenceforward as affecting themselves alone. They appointed a Committee, and this Committee consulted referees—Mr. Bradford Leslie and Mr. Whitfield, than whom no two men better qualified to devise a complete scheme of water-supply could anywhere have been found. But what was referred to these gentlemen was not the general question of the best possible means of meeting all the wants of the Town, but merely a particular modification of Mr. Kimber's scheme of filtered supply (which itself in the main followed the lines of one drawn up some years before by Mr. Leslie himself), supplemented by a further note by Mr. Kimber on the question of extending the unfiltered supply. Mr. Kimber's modified scheme was to cost Rs. 34,70,000. Nothing was said as to the possibility of preventing waste, and economising the use of filtered water generally, and no examination of the advantanges or disadvantages of a complete dual system of supply, filtered and unfiltered, was invited. The reference was, as it seems to me, vitiated by the limitation of its terms.

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The referees made, however, a careful report on the plans actually submitted to them, and the point in their report to which I wish to call special attention is this, that they told the Commissioners that they ought, for the Town alone, to have a 62-inch main. It would, they said, be folly to have any smaller size of conduit, the saving of cost being comparatively trivial. The difference in cost between a 42-inch and a 62-inch main is only about 4 lakhs of rupees—a mere trifle when works of such magnitude are involved, and so many advantages secured by the larger main. A 62-inch main would bring down 28 millions of gallons if required; and the head works and distributaries might be regulated to meet the demand as it grew. The scheme advocated by the referees, carefully confined to the four corners of the reference made to them, provided for raising the Calcutta supply to 12 million gallons, and extending somewhat the unfiltered supply, at a total cost of Rs. 33,44,000.

In the ordinary course of things one would have supposed that the referees' opinion given in December 1879 would have settled the question, as the Commissioners had no other more complete scheme before them, and were not looking for any. But the Calcutta Corporation had to satisfy itself that the referees knew what they were writing about. Every specification had to be subjected to discussion and analysis, time being no object, and the opportunity of studying water-engineering too good to lose. For six months the Committee were pulling the scheme to pieces, and at last the majority of them submitted a fourth schedule of proposed works giving the town 12 million gallons of filtered water and 4 millions of unfiltered at a cost of Rs. 33,48,000, but holding staunchly to the 62-inch main. This was in fact after all only the referees' scheme, slightly tinkered, the difference in cost being only Rs. 4,000, and the supply of water identical.

But the Commissioners are no more to be bound by the majority of their own Committee than by their referees. Dr. Mitra and my hon'ble friend opposite were of opinion that 12 millions of gallons were not nearly adequate to the wants of the place. Dr. Mitra is in possession of much curious information, as to the manners and habits of East and West, and he has come to the conclusion that a Calcutta population wants 50 gallons of water per man daily to make it happy, or say 25,000,000 gallons for 500,000 people, although Manchester with all its trade and a population of 600,000 uses only from 12 to 13 million gallons—waste included. Dr. Mitra tells us, however, that the well-to-do inhabitant here "stretches himself under water," once or twice daily in a bath requiring from 50 to 100 gallons to fill it; while in England "the bulk of the community" only take a sponge-bath once a fortnight, and wash their shirts only at equal intervals. There are certainly differences of habits as there are differences of climate between East and West, but the precise facts stated will no doubt interest the Council. In view of these, and other bits of statistical information, hardly suited for mention here, Dr. Mitra said in effect that he cared nothing for future generations. *They* might find their own tubs. What he wanted was to double the supply of filtered water now available, that all the population might, if it chose, stretch itself in baths daily, and bless the Calcutta Corporation. He thought this might be done with a 42-inch main.

Another member of the Committee was, however, Mr. Bruce, whose opinion on a matter of this kind is worth, at a low computation, that of ten ordinary Commissioners. Mr. Bruce wrote a minute which appears to me to show in a very remarkable way the incompleteness of all the schemes hitherto put forward. He showed that no attempt had been made in Calcutta to check the undoubted and excessive waste of filtered water, and that no sufficient consideration had been given to the question of extending the unfiltered supply throughout the town for all the viler uses of the population. He may have gone too far in saying that no extension of the filtered supply had been shown to be necessary. But his minute demonstrates conclusively that up to date the problem of the Calcutta water-supply had not been worked out in all its possible phases. Government certainly has had no complete report or analysis of alternative schemes in any shape yet laid before it. The Commissioners are still considering and debating, and except from the personal statements of my hon'ble friend, we have no information as to the general bent of their discussions. Indeed, as a matter of fact, the only scheme that has ever been officially communicated to Government is Mr. Kimber's original scheme of 1878, and a note by the late Chairman, Mr. Beverley, which the Commissioners decline to recognise as coming from them.

This sketch of all that has passed, so far as Government is either officially or informally aware, seems to me to afford a simple answer to all the statements regarding the impossibility or impropriety of treating the Town and Suburbs together in the matter of the water-supply. That answer is that the thing has never yet been properly worked out. We do not know how far prevention of waste in Calcutta, and the general extension of the cheap unfiltered supply, might reduce the cost of the works required. We have, as I said before, no authoritative scheme before us upon which we can form a final judgment as to the precise burdens that will actually be imposed upon either Town or Suburbs.

This section of the Bill therefore does not do more than enable Government to exercise, in respect of extensions of the water-supply, the powers which the law already gives it in respect of the drainage scheme. It does not bind the Government down to any particular form of extension. Government has no cognizance at present of any scheme which it is bound to support or push. The Town and the Suburbs must between them hammer out a plan to suit them, if they are not wise enough to refer the whole question to Government in the manner I have already suggested. The hon'ble member has sought to establish some distinction of kind between extensions of drainage and extensions of water-supply. I can see no such distinction. The reason why the question of extending the drainage system has not come up more prominently hitherto is simply because the Town has yet so much to do to complete its internal arrangements.

I cannot conceive, Sir, how any resident of Calcutta can be so short-sighted as to wish to confine such sanitary improvements as this within the limits of the Circular Road. The health of the Town is intimately dependent upon that of the Suburbs. The epidemic fever of Nuddea invades us from

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the north. From the south came creeping in only last year the foul and fatal plague of beri-beri. Not once, but often have the officers of the 24-Pergunnahs seen cholera sweeping down upon the town from the villages and marts outside. I myself, when attached to that district years ago, watched more than one such invasion of cholera as it marched from village to village along the principal roads until it fell upon the Town.

Calcutta ought not only to do away with its own vileness, but endeavour to secure a broad and wholesome belt of suburbs round it upon every side. Of course its action must be limited by financial considerations, and no one is more awake than I am to the heavy pressure of taxation in the Town. But in this particular instance, on the showing of the Municipal Commissioners themselves, the *possible* loss to the Town is after all trifling in the extreme. They reckon it, I believe, at an outside figure of Rs. 25,000. But the proof that there must be any loss at all rests, as I shall show, on a very uncertain and insufficient basis. But, however that may be, I submit confidently to this Council that the manner in which the Commissioners have dealt with this question, the interminable delays and discussions in which they seem to be forever losing themselves, are such that Government could not, consistently with its duty, any longer leave the water-supply of the Suburbs entirely to the discretion of the Town Corporation. That body is not bound by anything my hon'ble friend opposite may say, and is quite capable of being very unreasonable in the matter. The Government has delegated certain of its powers and functions to the Corporation. But it cannot, I think, continue to abandon the determination of this important matter to such an independent, dilatory, and, possibly, selfish body. The care of the sanitary interests of the metropolis, as a whole, must, when such large questions are involved, rest to some extent with Government. It must decide where drainage must go and water-supply be carried, and in so doing it will not, we may feel sure, unreasonably sacrifice the interests of either Town or Suburbs. It was in view to getting an equitable settlement of this matter of water-supply that the Lieutenant-Governor, in September 1880, moved the Commissioners not to overlook the Suburbs in their discussions. This was, I maintain, a most legitimate interference, which only finds formal warrant in the section that we are now discussing.

I have said, Sir, that we have no complete scheme before us, but there is sufficient on record to show that the theory that the Suburbs should pay a rate limited only by the demand of the Town is not either necessary or reasonable. The Council will remember that, from February 1879 to September 1880, the town was considering only its own wants, and that its own engineer, its referees, and its Committee all admitted that a 62-inch main was what the Town ought to have, even if the Suburbs were put out of sight altogether. The papers also show that, if the Town *had* a 62-inch main, it could not only supply itself, but, by erecting certain additional engines, filters, and so on, and by extending the distributaries, could supply also a large tract of Suburbs. It would be in the position of a man with a small family and a good cow. He gets the cow for his own use in the first place, and he wisely gets a good one

rather than a scanty milker, and sells the surplus milk to his own profit and the advantage of his neighbours. My hon'ble friend has tried to place us on the horns of a dilemma. I understood him to say that, if the Town got a 62-inch main on its own account, it would be because it required the reserve of power thus secured to it for future extensions of its own population. If it got it because the Suburbs wanted water, the Suburbs ought to pay their share of the cost. The fact, however, seems to be that the Town must have a 62-inch main in any case, and that the quantity of water which such a main can be made to supply, supplemented by unfiltered water, is more than the Town and Suburbs together can want for very many years to come. The future may be left to meet its own wants. This being so, Mr. Beverley, the late Chairman of the Corporation, being a good man of business, and having also a reasonable regard to the well-being of his neighbours, saw that the Town, having its 62-inch main, might supply the Suburbs and make a handsome profit on the operation. He showed that by spending Rs. 10,70,000 more on head-works and distributaries, the Town could give the Suburbs four million gallons daily, and, by then levying an equal water-rate in Town and Suburbs, actually lighten the burden which the Town would have to bear if it stood selfishly aloof, while, if the Suburbs were willing to pay a 6 per cent. rate on the extra outlay, the Town would actually make 10 per cent. on its money. Those figures were, moreover, based on the theory of a 2 per cent. Sinking Fund.

This scheme was forwarded to the Suburban Commissioners for consideration, with, at any rate, the knowledge of the Committee of the Corporation (for they decided to "await the reply of the Suburban Municipality" before taking it up themselves); and it was sent to Government by the Chairman for information, though with the intimation that the Commissioners had not yet accepted it It was in the letter forwarding that proposal, however, that the Chairman raised, for the first time, the question whether the Sinking Fund contribution might not be lowered to 1 per cent. That suggestion was beyond all doubt made, if not in consequence of, certainly in connection with, the proposed extension to the Suburbs. The Suburban Commissioners at once said they were willing to adopt the proposal of contributing an equal rate, and Government on its side urged the Corporation to send up a definite scheme, promising to take up the Sinking Fund question in connection therewith. But the Commissioners now, as the hon'ble gentleman informed us in Select Committee, repudiate entirely their late Chairman and his scheme, and desire to charge the Suburbs a full share of the cost of the 62-inch main, which originally they meant to have for themselves alone. They accept the reduction of Sinking Fund which Government has given, in the belief that they would make the larger main for the Town alone as the only really permanent style of conduit. But they turn round and tell us that it is not certain they would adopt this style of main if the Suburbs were not to be supplied. Sir, I say nothing is certain in dealing with the Corporation in a matter of this kind. Its Chairman binds it to nothing; its Committees bind it to nothing; its schemes come and go like clouds upon water. It is little else than a manufactory of speeches and an arsenal of delays. We cannot tell yet to what scheme the Corporation

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may pin its faith. But there is every reason why we should believe that no scheme, such as Government can, in the general interests of the metropolis, approve, would require the levy of more than a 6 per cent. rate in any part of the Suburbs to which it is proposed to carry the water.

The hon'ble gentleman tells us that no parallel can be drawn between Calcutta and the Suburbs, because Calcutta is a compact town and the Suburbs are scattered over a wide area. No one has yet proposed to carry the water-supply into every jungle and hamlet in the environs of Calcutta. It is proposed simply to extend it to tracts in the immediate vicinity, the circumstances of which are sufficiently like those of the Town to warrant the doing so. It is futile to raise false issues of this kind. Nor are statements of the comparative productiveness of the rates any more to the point. The one question is whether extension is financially warranted *per se*. What is required is the elaboration of a water-supply scheme in which all the conditions of the problem, as affecting both Town and Suburbs, shall be properly examined and worked out.

I believe the public would wish to see this done by a Committee of experts appointed by Government, or by Government and the Town conjointly. I am assured by competent authority that the questions of economizing and regulating the filtered supply, and of completing the unfiltered supply, may have a most important bearing on the financial aspects of the case, and that much misapprehension exists as to the cost and merits of the dual system. All these points require thorough working out, and, for myself, I feel bound to say that the experience of the past does not warrant the belief that the task can safely be left to the unaided talents of the Town Commissioners. Be that as it may, this section, as it stands in the Bill, only gives the Government the powers it ought to have in respect of ordering extension in general terms; it compels the Town to follow no particular plan, and it secures to the Corporation what is believed to be in any possible case a reasonable return for any outlay it may incur. Government will not, we may be sure, sanction needless or unduly costly works, or allow the Suburbs to rob the Town any more than the Town the Suburbs. At the same time it may be hoped that the Town will see what its true interests are, and not seek in a matter like this to drive a Jew's bargain with the Suburban Municipality. The hon'ble member denies that the Town feels any jealousy towards the Suburbs in respect of allowing it wholesome water. Let us trust that the Corporation will justify this assertion by their action in the future. They ought, in their own interest, to be not only benevolent, but beneficent, and even generous if generosity be really called for."

The Hon'ble Kristodas Pal in reply said he believed he spoke the sense of the Council when he acknowledged its obligation to the hon'ble member for the elaborate essay on the water-supply of Calcutta with which he had favoured it, and he dared say that the "chattering pies" to whom he had referred in such flattering terms would also acknowledge their obligation to him. It was not his vocation to defend the Municipal Commissioners of Calcutta here; he must confine himself to the provisions of the Bill before the

Council, but as his hon'ble friend had been pleased to call the Commissioners a body of "heterogeneous amateurs," because they ventured to talk on such an engineering question as the water-supply extension, he (BABOO KRISTODAS PAL) supposed that the views and opinions advanced by him on the subject did not emanate from an "amateur." The hon'ble member had given the Council a detailed analysis of the different schemes laid before the Commissioners for the extension of the water-supply. He would not trouble the Council with a review of that analysis, but the facts which the hon'ble gentleman had so carefully noted showed that the Commissioners had not been idle, and that, as the question involved a very large outlay, the Commissioners were bound in duty and in justice to the rate-payers to give the matter their maturest consideration. He was sure that the question would long ere this have been settled if the extension of the supply to the Suburbs had not been mooted by the Government. The original scheme included the extension of the supply to the Suburbs, but that scheme was abandoned, because the Suburban Municipality acknowledged their inability to bear the cost. The question had, however, been again raised and pressed upon the Commissioners by the Government, and the Commissioners felt themselves bound to consider the proposals of Government, hence the delay of which his hon'ble friend so bitterly complained. He had also spoken of the dual system, and other points in regard to which BABOO KRISTODAS PAL would not take up the time of the Council. The question of the dual system involved important details which the Council was not in a position to discuss, but he did not doubt that the views which had just been advanced would be duly taken into consideration by the "amateurs" to whom his hon'ble friend had so kindly referred. He readily admitted that the sanitary interests of the Town were intimately bound up not only with those of the immediate Suburbs, but also of the villages round about. As his hon'ble friend had himself shown, cholera had been known to extend to the Town step by step from villages in the 24-Pergunnahs, and, in order to protect itself, Calcutta ought certainly to be ahead; but he wished that the treasury of the Calcutta Municipality had been rich enough to meet the many obligations which the extended views of his hon'ble friend would impose upon the Town. There was a phrase used in the last budget minute of the Hon'ble the Finance Minister, of which BABOO KRISTODAS PAL was here reminded; he meant the very significant words "coercive philanthropy." He could not but say that if the Calcutta Municipality were to be burdened with any portion of the cost of the extension of the water-supply to the Suburbs or other environs on the ground that the Town was in a better position to pay, it would be a species of "coercive philanthropy" which the rate-payers of Calcutta could not be expected to appreciate. His friend had told them that it was not intended to extend the supply to all parts of the Suburbs; that only such parts of the Suburbs would be included as might be said to run on all fours with Calcutta. If these parts of the Suburbs did really run on all fours with Calcutta, there would have been no difficulty at all; but what was the fact? Taking the best parts of the Suburbs, he found that the financial results of taxation in Calcutta and the Suburbs were

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widely different. While a one per cent. rate in Calcutta yielded Rs. 1,30,000 per annum, even in the best parts of the Suburbs, which were proposed to be included in the water-supply scheme, a one per cent. rate would yield annually only Rs. 24,000, and while this vast disparity existed between the material condition of Calcutta and that of the Suburbs, BABOO KRISTODAS PAL contended that it was not reasonable to speak of equality between the two places. And, lastly, his hon'ble friend said that properly speaking there was no definite scheme before the Commissioners; if this was really the case, BABOO KRISTODAS PAL did not understand with what consistency it was proposed to fix the water-rate for the Suburbs definitively.

HIS HONOR THE PRESIDENT said that before putting the question he should like to allude very briefly to his hon'ble friend's main argument. There seemed to be a wish to make the Council believe, and HIS HONOR supposed from what had passed elsewhere, to make the public believe also that the Government was endeavouring to force on the rate-payers of Calcutta the liability of providing water at the expense of Calcutta to the Suburbs. HIS HONOR had no hesitation in saying that there was not the shadow of foundation for this inference. He had seen this statement made very frequently by members of the Corporation at their meetings, but they had nothing whatever before them to warrant that assertion. He had spoken of the advantages which the Corporation had received from the Government, and their obligation to look with consideration on the Suburbs, not with a desire to ask for their charity on behalf of the Suburban population; but he had mentioned the assistance given by Government as a reason why the Calcutta Corporation were now in a position to look at the claims of the residents of the Suburbs in a broad and liberal spirit.

So far from the extension of the water-supply throwing any additional burthen on the Town, the evidence, such as it was, was quite the other way. Although it was quite true, as the hon'ble member on the right (Mr. Mackenzie) had said, that, although the question had been under the consideration of the Corporation for years, no definite and intelligible scheme had been finally determined on, yet whatever schemes had been drawn up and prepared by the Corporation's own officers had all shown that a supply of water might be given to the Suburbs not only with no loss to the Corporation, but with a considerable reduction in the water-rate levied in the Town.

There was not the shadow of a doubt that the extension of the water-supply to the Suburbs would not throw any increased liability on the Town, and HIS HONOR could not do better than refer to a paper drawn up by the Chairman of the Municipality, which was prepared by him in consultation with the Municipal Engineer, and laid before the Corporation. After considering all the schemes, imperfect as they were, which were before them, the Chairman pointed out the commercial advantage to the Town of extending the works to the Suburbs. He said—

"It is notorious that a large concern can often be worked more economically than a small one; and the remark applies with greater or less force to the Calcutta water-works. Take for example the proposed new main conduit. It has been shown that a 62-inch

conduit will in the long run be far more economical than a 42-inch conduit; the larger main will convey 20 million gallons daily, the smaller main 8 million gallons only; yet the cost of the larger is only 17 lakhs against 13 lakhs for the smaller. Even were the smaller main adopted, it is clear that it would be more economical that the whole available supply furnished by it, namely 8 million gallons, should be fully utilized than that the conduit should be used to bring down 4 million gallons only. So with other works and charges for establishment and general superintendence.

"The main question then is—would it be profitable to the Town to extend its water-works into the Suburbs, on the understanding that the same rates were levied in the Suburbs that are levied in the Town? The Engineer has worked out this problem, and the answer seems to be in the affirmative. Mr. Kimber has worked upon the basis of the scheme set forth in the Committee's first report. That scheme, it will be remembered, provided for an increase of 4,000,000 gallons to the Town's daily supply of filtered water, besides increasing the supply of unfiltered water (for roads and latrines) from about 1,200,000 to 4,000,000 gallons."

The Chairman then went on to show at considerable length, and he showed conclusively, that it would not only pay, but would yield a very considerable profit to the Municipality on the extra outlay required, and yet the Council was told that there was an intention on the part of the Government to impose an additional burden on the Town for the benefit of the Suburbs. It was quite true that there were no absolutely reliable figures to go upon, as the Municipality had hitherto neglected to determine, as he said before, what schemes they would elect; but all the figures there were, and it might be understood that these figures, drawn up by the Municipal officers, were not likely to take an unduly lenient view of the position of the Suburbs, showed plainly, as far as they showed anything, that there was not the slightest ground for saying that there would be any extra burden thrown on the Town; but, on the contrary, the extension of the works to the Suburbs would bring considerable relief to the Town. They had been told that it was very wrong for the Government to interfere with the Calcutta Corporation in the matter of this water-supply, and that it was the general wish of the inhabitants that such questions should be left in the hands of the Municipality. Whatever might be the opinion of the Municipality themselves, he hardly believed that this was the view of the public at large any way. His Honor thought that, if the public had an opportunity of seeing how little had been done in a very long time, they would consider that it was quite time for the Government to interfere and put pressure on the Municipality to get the question settled one way or the other. Objection had been taken to the assertion that the Calcutta Municipality had shown a certain amount of jealousy in assenting to extend to the Suburbs the advantages of a good water-supply which they themselves enjoyed. His Honor might mention as a proof of this that a small scheme had been prepared by the Municipal Engineer for relieving the Municipality of the consumption of a good deal of their filtered water by substituting unfiltered water for certain purposes. The actual cost of that scheme out of pocket was about two and a half lakhs, and the effect of it would be to give the Municipality an unfiltered supply to the extent of four millions of gallons daily, for purposes for which unfiltered water would answer, in the place of 1,200,000 gallons which the Town had at present. This would set free for drinking purposes an equal amount of good filtered water. This

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scheme had been before the Municipality for over a year certainly, and nothing whatever had been yet done in regard to it. It remained just where it was, and although one would think the matter could have been settled in a fortnight, it had gone lingering and lingering on, and had since been shelved simply because the Commissioners could not agree upon such a simple and obvious question as that. How could it possibly be said that no jealousy was shown towards the Suburbs by the Calcutta Municipality, when it was seen that they would rather work their latrines and filth depôts with filtered water, than use the unfiltered supply to make a supply available for the Suburbs of good filtered water. With a small outlay of less than three lakhs the whole thing would be done, and the water required for the Suburbs made available; but because they were urged to take up in earnest and with intelligence such a plain matter as this, the Council were told that the Government was endeavouring to overburden the Municipality for the benefit of the Suburbs. A great deal had been said about the extent of the Suburbs, and pictures had been drawn of distant isolated hamlets receiving a supply of water at the expense of the people of Calcutta; but the hon'ble member must be perfectly well aware that the plan proposed was to supply water to certain definite thickly-populated streets and tracts in only those portions of the Suburbs which were near to Calcutta. The whole of the papers showed that the Corporation know perfectly well what was intended, and that the districts in question had been actually surveyed and valued. The hon'ble member had said that the Government was bound to look upon Calcutta as the metropolis of the Empire, and that that was a sufficient answer to the argument that, as Government had helped the Town, therefore the Town should help the Suburbs; but His Honor in such a matter could not draw such a distinction. He saw no reason why one side of a road was to be favoured because it fell within the metropolis, while the other side was shut out of all advantages. The Suburbs were to all intents and purposes a part of the metropolis, and he could not see why we should treat rate-payers, for instance at the end of Chowringhee, with special consideration, and show none to the houses a few yards off where resided a great number of respectable Pleaders of the High Court, simply because there was an imaginary line drawn at one end of that street. His Honor must say that he thought the whole of this opposition most unreasonable. As far as he was concerned, if this Act was passed, both Calcutta and the Suburbs would be fully consulted, and their interests equally guarded, and he could assure the Council that there was no desire to do anything to the disadvantage of either Calcutta or the Suburbs.

The Hon'ble Kristodas Pal's motion was then put and negatived.

The Hon'ble Kristodas Pal then moved that in section 15 the word "suburbs" be substituted for the word "environs," and the words "the Suburban Municipality" for the words "any Suburban Municipality."

The Hon'ble Mr. Mackenzie observed that he saw no necessity for the amendment. The section followed the lines of section 168 of the Act relating to drainage. This was intended to be merely an enabling section, and as there was no definition of "suburbs" in the Act, there would be no real difference between the signification of the words "suburbs" and "environs."

The HON'BLE THE ADVOCATE-GENERAL said he thought, after what had fallen from His Honor the President showing that there was no difference between the environs at one end of the Town or the other, legislation on the subject should not be partial in any one direction, but should be as wide as possible, the intention being to enable the Government to extend the provisions of the Act relating to water-supply to any Suburban Municipality the Government might think fit.

The HON'BLE PEARY MOHUN MOOKERJEE pointed out that the word "suburbs" had been defined in Act XXI of 1857, and in several Acts of the Council where the word "suburbs" had been used, reference had been made to the definition in Act XXI of 1857, as distinguishing the Suburbs from the station of Howrah.

HIS HONOR THE PRESIDENT remarked that the Government was taking power to extend the water-supply to places which could afford to pay for the extension. It was well-known that the Government had no intention whatever to extend the water-supply to Howrah, but the object of the provision was to enable the Government to have extensions made wherever it was fit and proper to do so. It was quite possible that the outlying stations of Chitpore and Cossipore might some time hence be in a position to need a water-supply, and the Commissioners themselves might wish to supply those places with water from the pipes which ran alongside. Why should the hands of the Government and the Municipality be tied up so as to prevent such desirable extensions? This was a purely permissive provision, and he thought the Council might rely on the Government doing nothing that might be unfair towards the Calcutta Municipality.

The motion was then put and negatived.

The HON'BLE KRISTODAS PAL moved that the following be substituted for clause 1 of section 16 of the Bill:—

Introduction of new section after section 162.

"16. After section 162, the following section shall be inserted, namely:—

Contribution towards pensions of Police officers.

"162A. The Police Budget may, if the local Government, with the previous sanction of the Governor-General in Council, shall so direct, include a charge for pensions payable under the orders and rules of Government to all officers and servants on whose behalf provision for the payment of salary has ordinarily been made in such budget, and who may retire from service after the commencement of this Act; such charge shall be payable by the Commissioners, but shall not exceed three-fourths of the total of such pensions."

He was not in a position to say whether any orders had been received from the Government of India in reply to the representation which had been made on this subject by His Honor the Lieutenant-Governor, but if BABOO KRISTODAS PAL had the option, he would move the entire omission of this provision in conformity with what fell from the President on a former occasion. But as the Council was not in a position to accept such a motion, he would move the amendment which stood in his name. The Commissioners were of opinion that a ten per cent. contribution towards pensions would saddle them with a higher proportion of payment than they ought in equity to bear, and they thought it would be fair and equitable if they were to pay only three-fourths of the pensions of such officers as might retire after the passing

of the Act. He might mention that a ten per cent. contribution would amount to a payment of about Rs. 17,000 per annum, and he found that the pensions of officers who had retired within the last ten years amounted to about Rs. 16,000 per annum; so that a ten per cent. contribution would practically cover the pensions of officers who had retired during the last ten years, and thus relieve the Government of that charge altogether. As that was not the intention of Government, he submitted his amendment for the consideration of the Council.

The HON'BLE MR. COCKERELL said he thought there was no objection to the amendment which had been proposed. When the services of officers of Government were made over to foreign States or for employment on wards' estates, a contribution of 20 per cent. was made both for furlough and pensions; in the present case contribution on account of furlough was not included, and it was calculated that 13 per cent. on gross salaries would cover pensions; but as the Government paid one-fourth of these salaries and the Municipality three-fourths, a ten per cent. contribution on aggregate salaries would, it was thought, be a fair contribution from the Municipality on account of pensions. As the Commissioners, however, preferred to pay three-fourths of the actual sum paid towards pensions, he thought there would be no objection to accept the proposal. MR. COCKERELL believed the result would be that the Municipality would pay less now and more hereafter. In all pensionary matters the ordinary rule was, and he thought it the equitable one, that pensionary allowances should come from the same source as pay, and that the charge should be divided between the Municipal and Government funds in the same proportion that the pay itself was divided.

The HON'BLE MR. MACKENZIE remarked that he did not see any objection to accept the section now proposed, excepting that it would probably be worse for the Municipality in the long run to pay three-fourths of actual pensions than to pay a contribution of ten per cent. on aggregate salaries. The contribution of ten per cent. had been fixed on actuarial principles, such as satisfied the Government of India in regulating its liabilities for the pensions of servants lent to foreign States and bodies, and a proportionate deduction had been made on account of the contribution of one-fourth now given by Government towards the charges in the Police budget. The Municipal Commissioners had, however, their own way of calculating and preferred their own figures. He might perhaps give one example to illustrate the effect of adopting the amendment. There were some of the higher paid members of the Police Force who would probably retire in the course of a year or two, and these would draw substantial pensions. Under the provision, as it stood in the Bill, the Municipality would only have had to pay ten per cent. on their salaries up to the date of their retirement and nothing more, but they would now have to pay three-fourths of their pensions so long as these officers lived. He observed in the reports of the Municipal meeting, held with reference to the Bill, that there was much misconception as to the meaning and bearing of the section as it stood. It was for instance entirely erroneous to say that it was proposed that the Municipality "should make payments towards pensions which were already being paid." The section provided for a

levy of ten per cent. on *salaries*, and no charge could therefore be made on account of men drawing not salaries, but pensions. He thought the Commissioners were hasty in putting forward their amendment, but it was their own doing entirely. There was another matter as to which he thought it right to enter a sort of *caveat*. The Government now paid one-fourth of the charges on account of the police, but that payment was made not as a matter of legal liability, but as a matter of grace. There was nothing in the Act as it now stood to bind the Government to pay any portion whatever of the charges contained in the Police budget, and though it might accept the proposal to pay one-fourth of pensions under the proposed amendment, this was not to be construed into binding it for ever to pay one-fourth of the salaries of police officers. The proposal to pay three-fourths of the aggregate amount of pensions came from the Commissioners, but the Government was perfectly willing to accept the amendment. The wording of the last clause of the section should be slightly modified to meet the change in the first.

The motion was then put, and after verbal changes the amended section was agreed to.

The HON'BLE KRISTODAS PAL moved that the following clause be inserted at the end of section 23 of the Bill:—

"Nothing in this section contained shall be construed to apply to the sale of drugs used by practitioners of indigenous medicine, whether these are recognized by the British Pharmacopœia or not; when such drugs are not sold in a shop or place where medicines recognized by such Pharmacopœia are dispensed upon prescription."

The HON'BLE PEARY MOHUN MOOKERJEE said he thought the objection taken to section 23 was well-founded. The section as it stood would not only put an unnecessary restraint on the sale of native drugs, and the preparation of Hindu medicines, but it would also give rise to this anomaly that, while unregistered shop-keepers would be prevented from selling such simple articles as soda and borax, they would be at liberty to sell such highly poisonous drugs as cobra poison, rasakurpura, a compound of the chloride and the perchloride of mercury, and orpiment, a natural compound of arsenic and sulphur which were not recognized by the British Pharmacopœia. The common ground which several articles occupy both as medicinal drugs and articles of ordinary and domestic consumption has made legislation on the subject of drugs a matter of great difficulty. Even in England, where only one system of medicine prevailed, the difficulty was far greater here where several systems of medicine obtained. BABOO PEARY MOHUN MOOKERJEE feared also that certificated compounders trained in the European system would be ill-qualified to dispense native drugs of the nature and properties of which they knew nothing. On these grounds he would support the amendment.

The HON'BLE AMEER ALI observed that the proceedings in the Coroner's Court showed that poisonous drugs were constantly being sold for medicinal purposes and this caused much mischief. He would suggest the insertion of the word "non-poisonous" before the word "drugs."

The HON'BLE MR. MACKENZIE said the question of the sale of poisons had repeatedly come before the Government, but it had been found very

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difficult to deal with the subject. There was no doubt that many of these drugs, like many European drugs, were poisonous when used in large quantities. But at present he thought it was much better not to interfere with shops where drugs were sold and dispensed according to the native fashion, and to confine the operation of the Bill to places where medicines were dispensed after the European method. The hope was that gradually people would learn to go to the shops where they were safe, and in time it might be possible to do away with unlicensed drug shops of all kinds.

His Honor the President remarked that the question of the sale of poisonous drugs had been discussed by the Government of India and all the local Governments, and the conclusion had been generally come to that it would not be safe to legislate on the subject.

The Hon'ble Ameer Ali withdrew his amendment, and the original motion was then agreed to.

On the motion of the Hon'ble Kristodas Pal, the following section was substituted for section 24 of the Bill—

"24. For the first clause of section 296, the following clause shall be substituted, namely:—

Inspection of drugs.

"The Commissioners, or any person authorized by them in that behalf, may at all reasonable times enter into and inspect any place kept for the sale of drugs, or in which drugs are sold, and if they have reason to suspect that any drug in the said place is adulterated, or by reason of age or the effect of climate has become inert or unwholesome, or has otherwise become deteriorated in such a manner as to lessen its efficacy, to change its operation or to render it noxious, may remove the same on giving a receipt specifying the nature and quantity of the drug removed and its approximate value; and if it appear to a Justice of the Peace that the said drug removed as aforesaid is adulterated, or has become inert, unwholesome, or deteriorated as aforesaid, he may order the same to be destroyed or to be so disposed of as to him may seem fit. If it shall appear to the said Justice that the drug so removed is not adulterated, or has not become inert, unwholesome, or deteriorated as aforesaid, the person from whose shop or place it has been taken shall be entitled to have it restored to him, and it shall be in the discretion of the said Justice to award him such compensation, not exceeding the actual loss which has been sustained, as such Justice may think proper."

Compensation if drug be not adulterated, &c.

The Hon'ble Kristodas Pal moved that the following section be substituted for section 26 of the Bill :—

Introduction of new section after section 310.

"26. After section 310, the following section shall be inserted, namely :—

Power to license fuel shops at burning grounds.

"310A. The Commissioners shall from time to time grant licenses to persons applying for such, for the sale, at burning grounds, of fuel and other articles used for the cremation of dead bodies, and shall in meeting, other than an ordinary meeting, prescribe a scale of rates for the sale of such articles; and any person not so licensed, who shall within three hundred yards of any such burning ground sell or offer for sale any such fuel or other articles, shall be liable to a fine not exceeding fifty rupees.

"The Commissioners may on good and sufficient reason revoke or withdraw any such license they may think fit, and any person to whom any such license is granted, who shall charge for the sale of any such article any higher rate than the rate fixed for such article in

such scale, shall, at the discretion of the Commissioners, be liable to have his license cancelled, and shall also be liable to a fine not exceeding ten rupees.

"The Commissioners shall not be bound to grant a fresh license to any person whose license may have been revoked, withdrawn, or cancelled, under the provisions of this section"

He said the object of this amended section was to encourage competition, and to enable the Commissioners to prescribe a fixed scale of rates for the sale of fuel and other articles used for the cremation of dead bodies. If the Commissioners had power to regulate the rates, all that was wanted would be attained. He need not repeat the circumstances which led to the introduction of this section in the Bill. There had been great scandals in connection with the sale of fuel and other articles at the burning-ghats, and it was therefore deemed necessary to license vendors and to regulate their charges. But as a fixed scale of rates for the sale of fuel had not the sanction of law, the proposed section would give that sanction.

The motion was agreed to.

On the motion of the HON'BLE KRISTODAS PAL the Bill was then passed.

The Council was adjourned *sine die.*

Reg No. 1829G.—200—25 5-81

PROCEEDINGS

OF THE

COUNCIL OF THE LIEUT.-GOVERNOR OF BENGAL

FOR THE

Purpose of making Laws and Regulations.

Saturday, the 21st January 1882.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding.*
The HON'BLE G. C. PAUL, C.I.E., *Advocate-General.*
The HON'BLE H. L. DAMPIER, C.I.E.,
The HON'BLE H. J. REYNOLDS,
The HON'BLE H. A. COCKERELL,
The HON'BLE D. M. BARBOUR,
The HON'BLE T. T. ALLEN,
The HON'BLE MAHARAJAH LUCHMESSUR SING BAHADOOR OF DURBHANGA,
The HON'BLE F. PRESTAGE,
The HON'BLE KRISTODAS PAL, RAI BAHADOOR, C.I.E.,
and
The HON'BLE AMEER ALI.

AMENDMENT OF THE CALCUTTA MUNICIPAL CONSOLIDATION ACT.

THE HON'BLE MR. REYNOLDS moved for leave to introduce a Bill to amend "The Calcutta Municipal Consolidation Act, 1876." He said this was a very simple measure, and he would have been unwilling to trouble the Council with it, but there was a practical difficulty which could only be removed by legislation, and the Government of India had suggested the amendment of the law. The only object of the Bill was to alter the date of the commencement of the municipal year in Calcutta from the 1st of January to the 1st of April. The Government of India had determined to publish, with the annual statements of revenue and finance, an abstract of the accounts of all the municipalities in British India, and in order to secure uniformity in the preparation of these accounts, it was thought essential that the municipal year of Calcutta should be

the same as the official year, which had been adopted throughout the country. But under the law as it now stood this change could not be effected. The Municipal Act prescribed certain dates on which licenses were to be taken out, and specified certain months in which meetings were to be held for fixing the rates of assessment and preparing the budget: and no power to alter those dates had been reserved either to the Government or to the Municipality: it was therefore necessary to introduce a legislative measure. Of course, when the change had once been made there would be no more difficulty in preparing a budget for the year beginning on the 1st of April than for one beginning on the 1st of January. The only possible inconvenience would be during the year of transition. He had been in communication with the Chairman of the Calcutta Municipality, and they had agreed upon the form of a short Bill which he hoped the Council would accept. He need not at present refer to the details of the Bill, as he was now only asking for leave to introduce it, and if leave was given, he hoped at the next meeting of the Council to introduce the Bill, and before that time it would be printed and in the hands of hon'ble members.

The motion was agreed to.

EMBANKMENTS AND WATER-COURSES.

THE HON'BLE MR. DAMPIER moved for leave to introduce a Bill to amend the law relating to embankments and water-courses. He said that, before the year 1873, the liability for the maintenance of embankments throughout Bengal was vague and indefinite. It was acknowledged that there was an obligation somewhere—an obligation towards the agricultural community at large—to afford protection from inundations. But how far that obligation rested upon the Government, and how far it rested on the zemindars individually of the estates which were benefited, was what one of His Honor's predecessors would have called "a fluid" question, the solution of which was to be found exceptionally in the settlement arrangements of certain estates only. Previous legislation had dealt only with the mode of giving effect to the obligation in cases where it was assumed that it rested with one party or the other—with the zemindar, or the Government.

In 1873 Mr. Schalch introduced a Bill into this Council to amend the existing law, and during the passage of that Bill through this Council, it was found that the time had come for defining the liability more precisely. The age of give and take had passed away; the time had passed away when people were ready to accept a paternal Government as an arbitrator to do justice between individuals and the public at large. The passage of that Bill through the Council was delayed for the purpose of making a thorough enquiry into the matter. Settlement engagements were examined, the general custom which had prevailed with regard to particular embankments was looked into, and a definite conclusion arrived at. The Government accepted certain definite liabilities, which were formulated in the Bill and ratified by this Council in the shape of Schedule D, which contained a list of the embankments for the maintenance of which the Government was to be liable in the future. With this part of legislation His Honor's Government

The Hon'ble Mr. Reynolds.

had no intention to interfere. There was a clause in the existing law which enabled the Government to add embankments as occasion might occur to Schedule D, and there was no intention of revising that schedule or of making any alteration in this substantive part of the law.

But, apart from the question of public embankments which had to be maintained at the cost of the public revenues, previous legislation had conferred upon the Government the right and duty of executing, through its officers, the works which were necessary for the maintenance of other embankments, the obligation for which rested on the zemindars. The expense was to be advanced by the Government and to be recovered from the zemindars of the lands benefited and the tenure-holders upon those lands. The Act of 1873 re-enacted, with amendments and improvements, the procedure clauses which empowered the Government to enter upon lands as necessary, and to do all that was required for the maintenance of these public embankments through its own Engineer officers, and it enacted clauses for apportioning the cost of such works among those who were liable to pay them, and for recovering such cost. These were the clauses with which the Bill MR. DAMPIER had now the honour to introduce would deal. In the course of eight years' working, as usual, defects had been discovered and suggestions had come to the surface for improvements to facilitate the working of this portion of the Act.

He would mention briefly the principal changes which it was proposed to introduce. Under the existing law certain powers for altering the course of embankments and removing embankments and starting new works were vested in the Collector. It had been found that the questions involved in the exercise of this power were so important and so often affected large tracts of country around, that it was not safe to leave them in the hands of the Collectors of individual districts. The Board had been obliged to issue instructions prohibiting Collectors from exercising certain of these powers without the previous approval of the Board to the project. A good deal had since been said about the impropriety of the Board—an executive authority—restricting the exercise of a power which the Legislature had conferred on its subordinates, but the fact remained that the Collector now was not allowed to exercise the powers in question without first obtaining their approval, and now the Government had thought it right to go still further, and to require that such projects should before adoption come up for the consideration of the Lieutenant-Governor, who would examine them in the Public Works Department with reference to the whole country which might be affected. The necessity of sending up these projects for the sanction of the Government before they were undertaken was one of the changes which it was proposed to make by this Bill.

Then in the existing law there was a certain section which provided that the land of embankments should be vested in the Government in trust for the public or the zemindar as the case might be. This section was indefinite and led to much difficulty and objection in its working; it was proposed to define that right of the Government more clearly.

Thirdly, as the law now stood, when damage was inflicted upon any person by any work which was done under the Act, compensation was to be made to him, and the Court which awarded compensation was not bound to take into consideration what benefit, if any, that same work had done, although the benefit accrued to the same individual in another part of his property. That defect would now be remedied.

One of the most important of the proposed changes for the benefit of the zemindar particularly was in the apportionment of the expenses. The law now required that the expenses incurred in each year should be separately apportioned over the zemindars and tenure-holders who were liable to pay, and the procedure in that behalf was so elaborate and intricate as to be almost unworkable. It was now proposed that the Government should estimate what the cost would be of maintaining embankments in any given tract, for the expenses of which the zemindars were liable, for a certain number of years as might be fixed in each case; that the amount so estimated should be divided into as many equal parts as there were years, and that a rate should be apportioned over the zemindars once for all—a contract rate in fact. The apportionment would be once for all instead of every year.

The existing law required notices to be served at every step in such number on every petty holder as to be perfectly unworkable. This would be simplified, and the principle adopted in the Road Cess Act would be introduced, which provided that special notices should be served only upon those who had interests above a certain amount. Those whose interest was very small must be satisfied with the general notice, which would be very widely published.

Lastly, there would be a special clause introduced with regard to the apportionment of the expense of maintaining the Gunduk embankment in Mozufferpore. A custom had prevailed there of apportioning the expense according to a method resembling one of the three modes which the Act recognised; but the practice varied somewhat from the prescribed system, and the assessments under it did not come strictly within the four corners of the clauses which empowered the Collector to apportion. He therefore proposed to introduce a section legalizing the customary mode of apportionment in respect of these embankments.

The motion was agreed to.

The Council was adjourned to Saturday, the 28th instant.

The Hon'ble Mr. Dampier.

Saturday, the 28th January 1882.

PRESENT:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding*,
The HON'BLE G. C. PAUL, C.I.E., *Advocate-General*,
The HON'BLE H. L. DAMPIER, C.I.E.,
The HON'BLE H. J. REYNOLDS,
The HON'BLE H. A. COCKERELL,
The HON'BLE D. M. BARBOUR,
The HON'BLE T. T. ALLEN,
The HON'BLE MAHARAJA LUCHMESSUR SING, BAHADOOR, OF DURBHUNGA,
The HON'BLE F. PRESTAGE,
The HON'BLE KRISTODAS PAL, RAI BAHADOOR, C.I.E.,
The HON'BLE AMEER ALI,
and
The HON'BLE J. E. CAITHNESS.

EMBANKMENTS AND WATER-COURSES.

THE HON'BLE MR. DAMPIER moved that the Bill to amend the law relating to embankments and water-courses be read in Council. He said that the Bill had been in the hands of Hon'ble Members for the time required by the rules. Although the Bill had been a good deal recast, he had adhered to the division into Parts which was to be found in the present law (Bengal Act VI of 1873). He would notice the principal changes which this Bill made Part by Part.

The first section which deserved notice was section 2 in Part I. The original intention had been to repeal Act VI of 1873 altogether, and to re-enact all the provisions of the embankment law into one statute *totus, teres, atque rotundus*. But unfortunately there was a practical difficulty. Some of the provisions of the existing Act were such that the Lieutenant-Governor had been advised that, if this Council were to attempt to re-enact them into law, then, according to the stricter construction which was now put on the restrictions which the Indian Councils' Act placed on the powers of this Council, the inclusion of those provisions would imperil the assent of the Governor-General being given to the Bill; he was obliged, therefore, to say in the Bill that Act VI of 1873 was repealed with the exception of the sections set out in the first schedule, and then he was obliged to have a very awkward schedule (II) of references, to explain how the references in the unrepealed parts of Act VI of 1873 should be understood to apply to the corresponding passages in the present Bill about to pass.

In the preliminary part (Part I) he had introduced three sections (4, 5, and 6) which might be said to deal with the general rights of the Government in reference to embankments as distinguished from rights connected with individual works. At the last meeting of the Council he mentioned that section 34 of the existing law, which declared that embankments were vested

in the Government, was vague, and had led to considerable misconstruction. Sections 4 and 5 read together were intended to remove that vagueness. Section 4 of the Bill reproduced section 34, which provided that embankments—meaning thereby the mound itself and its bermes proper—should vest in the Government itself. But then there remained the question of those plots of land adjacent to the bermes from which the Engineer had been in the habit of taking earth and other materials for the repair of the embankment. Under the existing law, surveys had been made of the lands which vested in the Government under section 34, and in carrying out that survey, the local officers had included these adjacent lands. Of course the proprietors immediately raised the question. They said "you have used these lands to take earth from, but they are not part of the embankment in the sense of section 34, and that section does not vest them in the Government." Section 5 of the Bill had been framed to meet this reasonable objection. It was to the effect that lands which had been customarily used for taking earth and other materials for the repair of public embankments should be at the disposal of the Government for that purpose only; that compensation should only be paid in respect of all other damage done to property on such land, but not in respect of earth and other materials taken from it; and then it was provided elsewhere that if the proprietor thought that such land was permanently injured, he might require that the Government should acquire the land under the Land Acquisition Act.

Section 6 was also a new section, and was rather an intricate matter to explain. It had to be read with section 18 and section 74, and was intended to meet a want which had been felt in administration. The existing law on the subject was embodied in section 53 of Act VI of 1873, which ran thus—

"Every person who, without the previous permission of the Engineer, shall erect, or cause or wilfully permit to be erected, any new embankment, or shall obstruct, or divert, or cause or wilfully permit to be obstructed or diverted, any water-course, if such embankment or water-course is likely to interfere with, counteract, or impede any public embankment or any public water-course, or shall abet any such act, shall be liable on conviction to a fine not exceeding five hundred rupees, or, in default of payment, to imprisonment of either description for a period not exceeding six months."

Under the law as it stood, any person might, acting on his own judgment and at his own peril, construct an embankment, or divert water-courses, and so on, if he thought that his work would not interfere with, counteract, or impede any public embankment, or any public water-course. But it was often a very difficult matter, requiring the knowledge of professional experts, to judge whether the new work did or did not so interfere, &c. As the law stood at present, when the Engineers found out that any such objectionable new work had been executed (and this they had to detect for themselves), if the Collector wished to enforce the penalty of the section, he was obliged to prove to the satisfaction of the non-professional officer who presided in the Court that the work done was such as "to interfere with, counteract, or impede any public embankment or public water-course." To prove this judicially was no easy matter; however obvious the thing might be to experts who understood the subject and the local circumstances, the attempt to prove it judicially was

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just as likely to break down as not. Under section 4, clause (2) of the existing law the Collector had the power to remove an embankment if he considered it an obstruction and that it interfered with the drainage of the country, but if he failed to get a conviction under the penal clauses of the Act on the ground that it so interfered, then the party who put up the embankment would under section 30 be able to claim compensation for the removal. This made it extremely difficult to work. The Lieutenant-Governor had therefore found it necessary to ask the Legislature for power, in some parts of the country where circumstances required it, absolutely to prohibit the construction of such works without leave previously obtained from the authorities. But this was not absolutely necessary in all parts of the country; and the provisions of the Bill had been devised to meet this state of things. Section 6 provided that the Lieutenant-Governor might notify certain tracts within which the works should not be done by individuals without obtaining previous permission, and the mere fact of so violating this prohibition had by a subsequent section of the Bill been made penal. But, as MR. DAMPIER had said, it was not necessary to extend this somewhat strict clause to the whole country, and therefore as regards all the country which was not notified as included in tracts to which the prohibition should apply, the law would remain as it had been hitherto.

Passing on to Part II, relating to the powers of the Collector and the procedure thereon, section 7 was very important and took the place of the old section 4. It defined the powers to be exercised by the Collector—by the Collector not as an individual officer, but as the representative of the Government, acting in its Revenue Department. That should be thoroughly understood, because a good deal of discussion had been raised on this point. Under the existing law, the Collector had a good many of these powers, and when it became necessary for his revenue superiors to restrict him in the exercise of those powers, it had been urged that as the law vested them in the Collector it was unconstitutional of the superior revenue authorities to restrict the exercise of them by each Collector according to his own discretion. MR. DAMPIER himself thoroughly disagreed in such a view. His own belief was that whenever (in connection with the performance of executive as contra-distinguished from judicial functions) the law said that the Collector or the Magistrate, or any other specified officer, might do so and so, it meant (unless the contrary was expressed or implied by the context) that he might do so "if his executive superiors would let him." However, section 7 as drafted met the objection; its purport was that those works, regarding which it had been found by experience that a larger view should be taken than that which the Collector or Engineer of an individual district might take, should be initiated by the Collector, but should not be finally undertaken without the sanction of the Lieutenant-Governor, who would consider the proposal in the Public Works Department, with reference to the whole aspect of the question. Of course the Lieutenant-Governor was to be got at through the usual channel of the Commissioner of the Division, and so on.

Regarding Part III, procedure in the case of danger to life and property, what was called the "emergent procedure," he had no remarks to make, because it was a reproduction of portions of Part III of the existing Act. There was no alteration which was of sufficient importance to bring to the notice of the Council.

Part V, which was imperfectly headed "acquisition of land," but which ought to have been headed "acquisition of land and compensation," had been the subject of much discussion; but the only alteration which had as yet been embodied in the Bill was the 4th clause which had been added to section 38. As the law stood, in awarding compensation for damage done, there was no provision made that any benefit which the party claiming compensation had derived from the same work, in another part of his estate perhaps, should be set off against his claim to compensation for damage done to him elsewhere.

MR. DAMPIER had therefore simply re-enacted from Act XXXII of 1855 that the Judge and the assessors should take into consideration, in settling the amount of compensation, whether any party to the suit had derived benefit from the work in respect of which compensation was claimed, and should set off the estimated value of such benefit against the compensation which would otherwise be decreed to such party. That was the only material alteration as yet in the Bill. But his hon'ble and learned friend the Advocate-General had brought to his notice a correspondence which would make it necessary to introduce certain words into this Part of the Bill to clear up certain doubts which still existed therein, and to which he would call the attention of the Select Committee in due course.

Then, Part VI related to the cost of works, proceedings, &c., and in connection with this Part MR. DAMPIER would notice a difficulty which he had mentioned at the last meeting of the Council as regards the service of notices which were required by the Act at every turn. And here he would read to the Council what Mr. H. L. Harrison said in his Manual on Embankments in a note to section 38 of the Act—

"It has been already remarked that the weak point in the Act is the system of serving notices in the most wholesale manner at every stage of the proceedings. Take an ordinary case of the repairs to a line of embankments some 20 miles in length, which would probably protect some 200 square miles of country which might well contain 250 estates and 500 villages. The cost of repairs would, perhaps, be Rs. 4,000 in any given year. Notice of the receipt of estimates would have to be served on the 250 estates by putting up a copy at the mal cutcherries of such as had them, and where no such cutcherry exists by fixing them up in a conspicuous place, and by delivering a copy to the agent who paid the last, or shall pay the next, instalment of revenue, if the revenue be over Rs. 100 per annum. Next, on the receipt of the accounts, the same process has to be gone through for the 250 estates and the 500 villages, and to crown all, when the amount to be apportioned has been fixed, similar notices have to be served, containing the list of names, that is 750 notices, each containing 750 names. Lastly, when apportioned, further notices have to be served on estates (section 49). Thus in the case concerned 2,500 notices would be served from first to last, to levy Rs. 4,000, even if levied once for all; and it can hardly be maintained that it is practicable to go through this procedure month after month. The alteration which is needed is to make the service of separate notices only necessary for large estates where payments would be heavy, say estates paying above Rs. 100 revenue as in the case of the Road Cess Act."

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That was the principle which had been adopted in the Bill. Notices were divided by sections 78 and 79 of the Bill into general and special in respect of each project of work, of each set of estimates, of each set of accounts, and of each apportionment of expenses; general notices would be widely published as provided in section 78, but special notices would only be served in respect of the larger interests affected; the amounts to be paid in respect of some estates and tenures were so small that the service of special notices would cost more than the amounts for which they were served. MR. DAMPIER thought this change would commend itself to the Council.

Section 57 recognized the mode of apportionment which had hitherto been in force in the Gunduck embankment in the Mozufferpore district. It was found that the expenses hitherto incurred for the maintenance of these embankments had been apportioned on a system which affected to be one of the three modes of apportionment recognized by the Act. But it was not exactly in accordance with any of those systems, and the procedure which had been adopted was not covered by the section in the existing law. The object of the clauses which had been inserted in the Bill was to legalize what had been done, and also to legalize the system which had now become the custom in respect of these embankments as regards the apportionment of all expenses to be incurred in the future.

Sections 62 to 67 contained, perhaps, the most important part of the Bill. Hon'ble Members who had read the correspondence which had been circulated as annexures to the Bill were aware of the difficulty which attended the apportionment year by year of the expenses actually incurred, and there was another objection to the existing system. When an embankment was first taken in hand by the Government, there was usually a very large initial expenditure to get them into proper form. The expenditure of the first two years was extremely heavy, and the payment of it was an intolerable burden on the Zemindars concerned; but after the embankment was got into order the mere expense of maintaining it and of repairs was trifling in comparison. It was proposed to get over the difficulty and trouble to all concerned by introducing what might be called the contract system. The Lieutenant-Governor would decide what was likely to be expended in the maintenance of an embankment in any number of future years which he might think proper to take as the period included in his order. Then, the total of such amount would be the amount payable by those who were liable for the expenses during that period, and that total amount would be divided into as many equal parts as there were years within that period. The limit which was imposed by a certain section of the present Act was retained, but the amount payable in any one year would not be more than one rupee an acre, on the area benefited or protected.

It was obvious that any means by which all the annual repetition of the flood of notices and trouble of apportionment could be got over would be an enormous relief to those who were concerned. Before the contract was finally entered into the parties interested would have every opportunity of submitting their objections, which would be fully considered.

Section 69 was a reproduction of the existing law which provided that the amounts due to the Government under the Act should be recovered as arrears under the provisions of the Public Demands' Recovery Act. MR. DAMPIER was personally answerable for the introduction of sections 70 and 71. Under the existing law the only mode of recovering arrears was under the provisions of the Public Demands' Recovery Act, under which the property and person of the individual only, who was liable for the payment at the time of apportionment, could be followed. Suppose that before the amount was levied the proprietor sold his estate and became insolvent. Was the Government, which had advanced the money, to lose the sum which it had advanced? Certainly not. The money had been expended for the benefit of the estate, and it was only reasonable that payment of the amount should be secured on the land. The principle of sections 70 and 71 was not new; it had been accepted by the Council in the Drainage Act which it passed last year. If the Collector could not recover from the individual, or under any circumstances, if he thought proper, he would be empowered to recover the sum advanced from the land in one of the modes specified in section 71.

Sections 82 to 84 related to appeals and the power of revision and control. The essence of them was that certain orders should be appealable as of right, but in all matters the superior controlling authorities should have the power of controlling and of revising the orders passed by their subordinates.

Section 88 was new, and it provided that the Lieutenant-Governor might make certain rules. It was taken from the Bengal Irrigation Act, III of 1876. It was found a very useful provision, as under it almost anything which was overlooked in the Act in respect to machinery might be supplemented by means of rules passed by the Lieutenant-Governor.

Then section 89 saved the operation of certain Acts; it provided that the Act should not apply to any embankment, land, or water-course which was under the operation of the Drainage Act, the Irrigation Act, or the Canal Tolls Act.

The HON'BLE KRISTODAS PAL said he generally accepted the reasons which had induced the hon'ble mover to introduce this Bill. He entirely agreed with him that the eight years' working of the Act had certainly disclosed defects which ought to be remedied. He was glad to observe that the hon'ble member did not interfere with the substantive part of the law. The Bill was, strictly speaking, to be a Bill of details, which would be better dealt with in Committee. But there was one important question of principle which BABOO KRISTODAS PAL wished to bring to the notice of the hon'ble Council. Under the existing Act, and under the Bill as it had been framed by the hon'ble mover, the Collector would be the responsible officer to supervise the operations of the Engineer, subject of course to the control of the Commissioner, the Board of Revenue, and the Government of Bengal in the Public Works Department. The Collector, as the hon'ble mover observed, would be the representative of the Revenue Department of the Government, but BABOO KRISTODAS PAL found that a very experienced Collector had himself stated that he was not in a position to exercise any control over the Engineer. He held in his hand a

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copy of the report of a Committee appointed by His Honor's Government in 1879, which was signed by Mr. Dampier, Mr. Harrison, and Colonel Haig, and in which it was stated that Mr. Harrison strongly contended that "it is quite impossible for the Collector to exercise any control over the *details* of repair estimates, and that any rule the tendency of which is to make him responsible for them is inequitable, and must practically be a dead-letter." BABOO KRISTODAS PAL thought it would conduce greatly to the relief of the Collector if a committee was associated with him in superintending the operation of the Act. The Embankment Act, he submitted, was analogous in principle to the Road Cess Act and the Drainage Act, and under the last two Acts committees were associated with the Collector for the administration of those Acts. There were many questions arising out of the Act in the settlement of which the Collector might derive material assistance if persons interested in embankments were associated with him as a committee to give him information and advice. He did not mean that the power and control of the Government over the operations of the Collector should in any way be diminished; all that he meant was that, if persons interested in embankments, and who were required to pay for their maintenance, were formed into a committee and associated with the Collector in the administration of the law, it would be satisfactory to the people and conducive to the efficient working of the law. What particular powers should be assigned to the committee would be a matter for the consideration of the Select Committee, if the Council accepted the suggestion which he had taken the liberty to make. But he did think that the time had now arrived when those who were called upon to pay for the maintenance of embankments should have a voice in the expenditure of the money contributed by them. The hon'ble mover of the Bill in moving at the last meeting of the Council for leave to introduce the Bill said that "the age of give and take had passed away; the time had passed away when the people were ready to accept a paternal Government as an arbitrator to do justice between individuals and the public at large." If Bengal had passed the patriarchal epoch, BABOO KRISTODAS PAL thought that the time had arrived to give those who were interested in the maintenance of embankments a voice in their own affairs. This was now also the policy of the Government, and it would be quite in consonance with that policy to give those who contributed towards the maintenance of embankments a voice in the administration of the law. He found that Mr. Worsley, Collector of Mozufferpore, made some such suggestion in his report on the draft Bill; he thought that the administration of the embankment law should be put under the Road Cess Committee. BABOO KRISTODAS PAL did not go with Mr. Worsley fully in the recommendation he had made, but he thought it was one which was entirely consistent with the suggestion he had now made. He therefore submitted this suggestion for the consideration of the Council.

The HON'BLE AMEER ALI remarked that there were various points in this Bill regarding which he entertained serious difficulty, but as he believed it would be explained away when the measure was considered in Select Committee, he would not occupy the time of the Council unnecessarily. There was

one point, however, to which he was bound to call the attention of hon'ble members. Section 75 of the Bill provided that any person who should without due authority cut through, or attempt to cut through, or attempt to destroy any public embankment, or open, or shut, or obstruct any sluice in any such embankment, or in any water-course, should, in case the act did not amount to mischief within the meaning of the Penal Code, be liable to imprisonment of either description for a term not exceeding one month, or to a fine not exceeding two hundred rupees.

He could not see the necessity of the words "in case the act shall not amount to mischief within the meaning of the Penal Code." The section was no doubt a transcript of section 54 of the existing Act, but that was no reason for perpetuating a mistake. The definition of the term "mischief" in the Penal Code was sufficiently comprehensive to include all possible offences intended to be made punishable by section 75. He did not therefore perceive the reason for enacting an offence outside the Penal Code, and would suggest that the words to which he had referred might be left out.

The hon'ble the ADVOCATE-GENERAL remarked that the objection which had been raised did not appear to him to be of much practical force, because, if the offence which was defined in this section could possibly be committed by inadvertence, there could be no doubt that it would be met by a very slight fine.

HIS HONOR the PRESIDENT observed he did not doubt that the question which had just been raised would be taken into consideration by the Select Committee. And with reference to the suggestion which had been urged by the hon'ble member who first spoke, if he would bring forward any really practicable scheme under which those who were interested in the maintenance of embankments might have a voice in the administration of the law, HIS HONOR would be happy to give the matter his earnest consideration. It seemed to him that it might be a matter of practicable difficulty to get together a Board who were sufficiently interested in the question, and who were qualified to give an opinion in a matter which might affect the public outside of their own estates. But if the thing could be practically done, it was entirely in accordance with his own views to associate with the Collector a Committee of gentlemen who took practical interest in the matter, in the same manner as was done under the Drainage Act.

The motion was then carried and the Bill referred to a Select Committee consisting of the Hon'ble Mr. Reynolds, the Hon'ble Mr. Allen, the Hon'ble Kristodas Pal, and the Mover, with instructions to report in one month.

AMENDMENT OF THE CALCUTTA MUNICIPAL CONSOLIDATION ACT.

THE HON'BLE MR. REYNOLDS moved that the Bill further to amend "The Calcutta Municipal Consolidation Act, 1876," be read in Council. He said that it would be in the recollection of the Council that when he moved for leave to introduce this Bill he stated that the sole object of the Bill was to alter the date of the commencement of the municipal year. The Bill had since been printed and was in the hands of the members, and it was so short that he need not

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take up much time in explaining its provisions. It simply provided that the year should commence on the 1st of April, and that in respect of such licenses as might have been taken out, or which were required to be taken out during the current year 1882, in the case of yearly licenses twenty-five per cent., and in the case of half-yearly licenses fifty per cent., calculated upon the full amount chargeable upon such licenses respectively, should be paid, and that the licenses which would expire on the 31st December should continue in force till the 31st March following, and those which would expire on the 30th of June should continue till the 30th of September. The 6th section of the Bill merely provided—it was thought safer to introduce the section—that any one who neglected or refused to pay the additional sum payable by him under this Bill should be liable to a fine in the same way as if he had not paid the fee for his license under the Act now in force. The only other matter to which MR. REYNOLDS would call attention was the proviso to section 3. The Bill substituted certain months for certain other months in the Municipal Act. But it substituted those in the same rigid way in which the months were specified in the existing Act, and it appeared convenient that there should be given to the Government, on the application of the Commissioners in meeting, power to alter and substitute other dates for those now in the Bill. A very similar practice had at one time been adopted in the Calcutta University procedure. It was formerly the case that the regulations of the Calcutta University, which had the force of law, prescribed specific dates for the various examinations held by the University, and this would have led to considerable inconvenience if there had not been a saving provision which allowed the Syndicate to alter all dates. It was to obviate the occurrence of any similar inconvenience that he had inserted the proviso to section 3 of this Bill.

THE HON'BLE AMEER ALI said that he had a suggestion to offer with reference to section 6 of this Bill which would probably meet with the approval of the hon'ble member in charge of the measure. This section provided that whoever neglected or refused to pay the additional sum required under the two last preceding sections should be liable to a fine not exceeding three times the amount payable by him exclusive of the amount so payable. He would suggest the insertion of the words "within three days after service upon him of a written requisition in that behalf." The neglect to pay the amount might be accidental, as often happened to be the case, and it would be rather harsh to punish a man with such a heavy penalty for an accidental omission. He hoped the Select Committee, to which the Bill would be referred, would consider this point.

The HON'BLE MR. REYNOLDS observed that the suggestion which had been made by the hon'ble and learned member would be considered in committee.

The motion was then agreedto, and the Bill referred to a Select Committee, consisting of the Hon'ble Mr. Allen, the Hon'ble Mr. Caithness, and the Mover, with instructions to report in a week.

The Council was adjourned to Saturday, the 11th February next.

By order of the President the Council was further adjourned to Saturday, the 18th February.

Saturday, the 18th February 1882.

PRESENT:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding*,
The HON'BLE G. C. PAUL, C.I.E., *Advocate-General*,
The HON'BLE H. L. DAMPIER, C.I.E.,
The HON'BLE H. J. REYNOLDS,
The HON'BLE H. A. COCKERELL,
The HON'BLE D. M. BARBOUR,
The HON'BLE T. T. ALLEN,
The HON'BLE F. PRESTAGE,
The HON'BLE KRISTODAS PAL, RAI BAHADOOR, C.I.E.,
The HON'BLE AMEER ALI,
and
The HON'BLE BUDHEB MOOKERJEA, C.I.E.

AMENDMENT OF THE CALCUTTA MUNICIPAL CONSOLIDATION ACT.

1. The HON'BLE MR. REYNOLDS moved that the report of the Select Committee on the Bill further to amend "The Calcutta Municipal Consolidation Act, 1876," be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee. He said that the only alteration which had been made by the Select Committee was the introduction of a section to provide for the renewal of the registration of carts upon the same principle as that adopted in the Bill for the continuance of half-yearly licenses. By the law as it stood the effect of the law practically was that the owners of carts had to take out half-yearly licenses, although the Act spoke of the registration of carts and of the payment of registration fees, and not of the taking out of licenses; consequently, a section had been added to the Bill to make it clear that the provisions of the Bill relating to licenses should apply to the registration of carts.

With regard to the question of giving notice of payment of the additional sums which the Bill imposed, he observed that an amendment had been placed on the notice paper, but if the hon'ble member in whose name the notice of motion stood would allow him to offer an explanation, perhaps he would not find it necessary to press the amendment. The question had been considered by the Select Committee who thought that no notice was necessary, because they could not conceive any circumstances under which persons upon whom the additional sums were to be imposed would not become aware of their liability. The Bill would not interfere with existing licenses which would remain in force, and it was only on the renewal of a license that the additional sum imposed by the Bill would become payable. Anyone, for instance, who, during the present quarter, might have taken out a yearly license for Rs. 8 would hold a license which would remain in force till the 31st December 1882; but when he came in

January next to renew his license for the year 1883, he would be told that he must pay a sum of Rs. 2 for the continuance of his license to the 31st of March following. In the same way anyone who had not already taken out his license, and who wished to take out one for 1882 after this Bill became law, would not have a license in the form in which he applied for it, but he would be called upon to pay Rs. 10 instead of Rs. 8, and would be told that his license would continue in force till the 31st March 1883. The Select Committee had made this clear by inserting in section 4 the words "on the expiry of the same," and consequently they thought it unnecessary to make any special stipulation that notice should be given.

The HON'BLE AMEER ALI said that, after the remarks which had just been made, he did not think it necessary to move the amendment of which he had given notice, and he accordingly withdrew it.

The HON'BLE MR. DAMPIER asked whether the Select Committee had considered the case of a person who, having the intention of closing his business on the 31st March, did not take out a license for the following year. In a case like this, how was it proposed to recover the proportionate amount of license fee for the period of three months which intervened between the expiration of the old calender year and the new financial year. As he understood it, licenses expired now on the 31st December, and under this Bill the operation of such licenses would be extended for three months by the payment of a proportionate fee, and the mode of recovering such fee was when the licenseholder came up for the renewal of his license for the following year, the first of the financial years now to be adopted. But suppose he did not apply for a fresh license, but wound-up his business on the 31st March, he would have carried on his business for three months without having paid the additional proportionate amount of fee. MR. DAMPIER asked whether it was that provision was not made for a case of that kind because, the cases being very few, it was not considered worth while to look after them.

The HON'BLE KRISTODAS PAL explained that as soon as a man's license expired he was bound to take out a fresh license; he was not authorized to carry on his business without a license. If a license expired on the 31st December, the holder of such license was required under the law to take out a fresh license on the 1st of January. If he intended to wind-up his business on the 31st March, he was still bound to take out a license for the year, but he would be entitled to a refund after he had closed his business.

The HON'BLE THE ADVOCATE-GENERAL observed that when a man knew that his license had expired he was bound to take out a fresh one, and if he failed to do so he was liable to prosecution under the Act.

The motion was then agreed to.

The HON'BLE MR. REYNOLDS moved that the Bill be passed. He said it was not altogether usual to move for the passing of a Bill on the day on which the report of the Select Committee was first taken into consideration, but though this Bill was one of no great importance, it was necessary that it should be submitted for the assent of the Governor-General in time to admit of its becoming law by the 1st of April. This might of course be done even if

there was an adjournment for a week, and he had no objection to such an adjournment if the Council desired it, but as he understood that there would be no further business ready for that day week, it seemed hardly necessary to trouble the Council to meet only for the purpose of passing a small Bill of this kind.

The motion was agreed to, and the Bill was then passed.

The Council was adjourned to a day of which notice will be given.

Saturday, 1st April 1882.

PRESENT:

HIS HONOR THE LIEUTENANT-GOVERNOR, *Presiding.*
The HON'BLE A. PHILLIPS, *Acting Advocate-General.*
The HON'BLE H. L. DAMPIER, C.I.E.
The HON'BLE H. J. REYNOLDS.
The HON'BLE H. A. COCKERELL, C.S.I.
The HON'BLE D. M. BARBOUR.
The HON'BLE T. T. ALLEN.
The HON'BLE KRISTODAS PAL, *Rai Bahadoor*, C.I.E.
The HON'BLE AMEER ALI.
The HON'BLE BHUDEB MOOKERJEE, C.I.E.
The HON'BLE MOULVIE MAHOMED YUSUF.

EMBANKMENTS AND WATER-COURSES.

THE HON'BLE MR. DAMPIER moved that the Report of the Select Committee on the Bill to amend the law relating to embankments and water-courses be taken into consideration in order to the settlement of the clauses of the Bill.

The motion was agreed to.

The HON'BLE MR. DAMPIER also moved that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee. He said that in making this motion he would call the attention of the Council to the salient points in which the Select Committee had made alterations in the Bill as it was referred to them by the Council.

It would be seen that in the definition section the Committee had added an explanation to the definition of "zemindar." The explanation was to the effect that, under certain circumstances there specified, the Government should be deemed to be the "zemindar." Advances for the repairs of embankments were made from the Exchequer, and the effect of this explanation would be that when it came to the apportioning of the expenses over the estates benefited for the purpose of recovering such advances, the Government itself would be held liable as zemindar in respect of the protection of such properties as it held for public purposes; for instance, the land occupied by irrigation works. The apportionment in respect of these estates being made on the Government as the zemindar, the result would be that the neighbouring proprietors would be

relieved of so much of the expense, and so much out of the advances originally made by Government for the execution of the embankment work would not be recovered at all.

In section 17 the Committee provided that any dispute as to the apportionment of expenses of altering a road or railroad, or for constructing a water-course under a road or railroad, should be decided by the Lieutenant-Governor, whose decision would be final. There was a certain apportionment of expenses provided for in the existing Act, but it did not provide who was to be the deciding authority, if there was a dispute between the parties.

The Committee had added sections 21 to 24. It was suggested first by Mr. Worsley, who was a very active Collector in matters relating to embankments, that matters of this sort might be made over to District Committees, representing the proprietors whose estates would be benefited and who would be liable to recoup advances to Government. The Hon'ble Member opposite (Baboo Kristodas Pal) was very strong on this point in the Select Committee, and as a representative man he wished to introduce clauses making it compulsory on the Government to appoint embankment committees in all districts and vest them with certain powers and functions. The Committee did not agree to that view, but had introduced these permissive clauses empowering the Government to appoint committees and to vest them with any powers (up to superseding the Collector) which the Government might think fit.

Section 72 was a somewhat important section. As the Bill was introduced it provided that in recovering expenses the Collector should follow the individual proprietor by the certificate procedure of the Public Demands Recovery Act; but if the circumstances made it necessary to act exceptionally, he could recover the expenses from the estate itself, or in other words the land was to be ultimately liable. What the Committee had done in section 72 was to formulate that liability of the land. The Committee had provided that if the estate was sold, the liability for these expenses still attached to the land, whether it was sold by private contract or by decree of court or for arrears of revenue. And Hon'ble Members would see that there was a clause about these charges being deemed to be borne in a certain way in the public accounts; the effect of that was that out of the surplus proceeds of a sale for arrears of revenue this demand should be a first charge before the surplus was available to be returned to the late proprietor, or to be applied in payment of his private creditors.

The Committee had added a new Part special to Orissa—sections 92-94. The Council was aware that Orissa was not subject to the general Bengal Embankment Act which this Bill would replace. The Acts relating to Orissa remained in force, but there were serious defects in them which experience had shown on points which, for Bengal, were provided for in this Bill. Amongst other things there was a great defect as to any provision for what was called the emergent procedure. If the Engineer should see absolute necessity to take a work in hand without going through the usual procedure, there was no clause in the Orissa Act which would enable him to do so. It

was absolutely necessary for the safety of life and property that he should be vested with such powers. The Committee had therefore provided these clauses making the emergent procedure, which was and would still be in force in Bengal, applicable to Orissa so far as it could be done; but, unfortunately, a part of that procedure was contained in those sections of the existing Bengal Act which would be considered beyond the authority of this Council to re-enact if the Council once repealed them. The Council had therefore been obliged to let those sections out of the old Bengal Act stand unrepealed for Bengal generally, but they had no power to extend their application to Orissa. Sections 92 and 93 therefore extended to Orissa certain sections of this Bill merely making the reference to the Bill in those sections equivalent to references to the corresponding portions of the Orissa Act (XXXII of 1855).

In section 94 were enumerated certain other sections of this Bill which should also be applicable to Orissa; of these, section 4 vested lands occupied by embankments in the Government, section 5 was the one with which the Council were familiar about the use of land for the purpose of taking earth for the repairs of embankments, and the remaining sections were those which made it penal for any person, within a tract which had been proclaimed by the Lieutenant-Governor, to make alterations and additions to embankments and water-courses without previous permission from the Engineer. These were the sections which had been extended to Orissa because experience had shown the Government in the Public Works Department that they were absolutely required.

The motion was put and agreed to.

The Hon'ble Kristodas Pal said he had signed the report with certain reservations. It had been his misfortune to differ from his hon'ble colleagues on the Select Committee on certain important points, some of which were covered by the amendments of which he had given notice. The first of these was with reference to section 4, which provided that "every public embankment and every public water-course, and all land, earth, pathways, gates, bermes, hedges, belonging to, or forming part of, or standing on, such embankment or water-course * * * *, shall vest in the Government;" and the word "embankment" was described to include both embankments maintained at the expense of Government and embankments maintained on behalf of the proprietors or other persons interested in their maintenance; so that both public and private embankments came within the perview of section 4. It should be remembered that the primary object of this Bill was to remove the injustice committed against the proprietors of land by Survey officers by including lands as part of embankments in which these persons had the proprietary right. His amendment was to insert the following proviso at the end of section 4:—

"Provided that the vesting of lands in the Government as aforesaid shall not deprive any person of his right to use such lands in the manner in which he may have heretofore used the same."

The question raised by this amendment was not a new one. It was, he might say, threshed out in an official correspondence between the Government

The Hon'ble Mr. Dampier.

of Bengal and the Board of Revenue. Referring to the working of section 34 of the existing Act, Mr. Harrison, then Collector of Midnapore, wrote—

"In some cases earth is taken from cultivated land, the pits being dug in the midst and within the margin of the cultivation, and the land continues to be cultivated round their edges, and *in* them as soon as they become sufficiently shallow. Over such ditches I admit that no claim ought to be asserted, but in other cases the land at the foot of the embankment is entirely used for supplying earth. No cultivation has been attempted in it, and the proprietor does not attempt to exercise any act of possession over it. Such ditches, it seems to me, may most fairly be considered to be land belonging to, or forming part of, the embankment."

The Board of Revenue, it seemed, concurred in Mr. Harrison's view, and the Government accepting it issued the necessary instructions. In the spirit of the decision of the Government, BABOO KRISTODAS PAL proposed that, while ample provision should be made that the embankment officers should get earth from the neighbouring lands free of charge, no interference should be allowed with private proprietary rights. He thought that was both fair and equitable. This right had been enjoyed by proprietors from time immemorial, as Mr. Harrison's Embankment Manual showed. Government had hitherto maintained the public embankments in co-operation with the zemindars, that is by taking earth from lands belonging to them in the immediate neighbourhood of the embankments, and the zemindars had never claimed any compensation for earth thus supplied, and it was nothing but proper that that state of things should be continued. But when cultivation had been allowed in these lands and ditches and when the zemindar had the right to get rent from the occupiers of such lands, and rents had been decreed by courts of justice, BABOO KRISTODAS PAL did not see why the proprietary right should be taken away and the land should be vested *in toto* in the Government. It was true section 5 provided that the embankment officers could take earth required for repairs from the neighbouring lands, but when the land was once vested in the Government by section 4, the proprietors would have no right to complain if they should at any time be prevented from using the land in the manner they had done before. To lands which belonged to or formed part of a Government embankment, the Government might have an absolute right, but the case was different as regards lands abutting upon private embankments. The Government took over such embankments in trust for the interests of the public; the zemindar would bear the expenses of maintenance, the Government being merely the agent for the execution of the necessary work. In making over private embankments in trust to the Government he did not think the zemindars should forfeit the proprietary right in, and the privilege of, using the adjacent lands in the manner in which they had always used them. So, looking to the equities of the case and to previous practice, he thought it was but fair and just that the right of the zemindar to the use of the land without interfering with the embankment should be recognized by the Legislature.

HIS HONOR THE PRESIDENT asked the hon'ble mover of the amendment whether he did not think this amendment was more applicable to section 5 than to section 4 of the Bill. The class of lands which were referred to in

the amendment was included in section 5 and not in section 4. Lands used for purposes of repair were not vested in the Government; they were only deemed to be at the disposal of the Government for the purpose of obtaining earth or other materials for the repair of embankments.

The HON'BLE KRISTODAS PAL explained that the lands which were vested in the Government under section 4 were all lands "belonging to" or forming part of, or standing on, any embankment. It was quite right that lands "forming part of, or standing on," embankments should vest in the Government. He objected to the words "belonging to" in line 5 of section 4, and with the permission of the President he would withdraw the amendment of which he had given notice and move instead to omit the words "belonging to."

The HON'BLE AMEER ALI thought there could be no objection to the omission of the words "belonging to"; the meaning of the section would remain the same, and no harm could arise by omitting these words, whilst the impression which the hon'ble mover of the amendment spoke of might be removed.

The HON'BLE MAHOMED YUSUF suggested that the difficulty might perha be obviated by amending the section in this way—"Every public embankmen and every public water-course, together with the land on which it stands, and all earth, pathways, gates, bermes, and hedges belonging to, or forming part of, or standing on, any such embankment or water-course," &c.

The HON'BLE MR. REYNOLDS observed that if the words "belonging to" were omitted, as proposed by the hon'ble mover of the amendment, there would be considerable doubt as to whether bermes and hedges were "part of, or stood on," an embankment; but there could be no doubt that they "belonged to" it. Therefore he thought the omission of the words "belonging to" would be prejudical to the complete meaning of the section.

The HON'BLE THE ADVOCATE-GENERAL said he did not find that bermes and hedges were anywhere defined in the Act to be part of an embankment, and therefore it appeared to him that the words "belonging to" had better be retained as guarding against the possibility of bermes and hedges belonging to an embankment being held to be excluded from the scope of the section.

The HON'BLE MR. DAMPIER thought the remark just made by the learned Advocate-General was quite conclusive. MR. DAMPIER had been inclined himself to accept the amendment in deference to the wish of the hon'ble member, which was pressed both in the Select Committee and at present. But after what had fallen from the Advocate-General, he could not do so.

HIS HONOR THE PRESIDENT said it seemed to him there could be no possible doubt that the amendment should not be accepted, because the lands to which the hon'ble member referred were not the lands which were included in section 4; they were the lands from which earth was taken and were referred to under section 5. What was referred to in section 4 were the lands which formed part of the embankment itself, and the various parts which went to make up the embankment. The use of the words "belonging to" was not with the object of including something which was not a part of the embankment, but simply to include what formed part of the embankment itself. Therefore

it seemed to His Honor that the words "belonging to" were absolutely necessary to guard against any of the component parts of an embankment being excluded from what was intended to be vested in the Government. Lands which were taken up for repairs were separately and distinctly mentioned in section 5, which did not vest such lands in the Government, but simply gave a right of user, and did not authorize the taking of those lands for any other purpose whatever. He thought the difference was quite apparent, and that there was no possibility of any misconception on the subject.

The question that the words "belonging to" in line 5 of section 4 be omitted was then put and negatived.

The Hon'ble Kristodas Pal moved that the words "or which may be hereafter included therein" be inserted after the word "annexed" in line 6 of section 42.

The motion was agreed to.

The Hon'ble Kristodas Pal moved that the words "if he deems it necessary for the public interests" be inserted after the word "may" in line 3, clause 2 of section 43. He based this motion on the ground that the public interests should be considered equally in making additions to Schedule (D), as in removing from it embankments which were now included in it. The object was to enable those interested to submit representation to Government as to the desirability of bringing an embankment under the schedule.

The Hon'ble the Advocate-General said he thought it would not be advisable to insert the words proposed. The Lieutenant-Governor would of course not take the action indicated if it was not for the public interests, but the insertion of those words might lead some ingenious mind to suggest that an enquiry should be instituted as to whether the Lieutenant-Governor did think the inclusion of any particular embankment was necessary for the public interests. The action taken by the Lieutenant-Governor must be deemed to be for the public interests, and it seemed superfluous to insert words which would have the effect of putting it in a hypothetical way.

The Hon'ble Mr. Dampier remarked that the two cases dealt with in the first and second clauses of this section were not on all fours. The insertion of the words proposed would have the effect, as it were, of putting the Lieutenant-Governor to the proof.

The motion was put and negatived.

The Hon'ble Kristodas Pal moved the insertion of the following words at the end of section 47:—"So far as it may be practicable in consultation with the persons interested in such works." He said he had strongly urged this point in Committee, but his colleagues did not agree with him; they thought it might involve the necessity of serving notices, which was always a tedious process, and might defeat its own object. His own impression was that if, when surveys were first made, the zemindars interested were allowed an opportunity to explain their views to the Engineer, disputes and litigation might be minimised. This point was to a certain extent argued before the Embankment Committee of 1880, and in a note to their report the following occurred:—

"*Paragraphs* 36, 37, *and* 40.—*Note by Maharajah Joteendro Mohun Tagore.*—The zemindars can exercise no effective check upon estimates. It is admitted that 'it is quite impossible for the Collector to exercise any control over the details,' and 'that the Superintending Engineer is practically in the hands of the Executive Engineer.' But the zemindar is in no better position. He cannot check even the measurements inasmuch as he has not the means of testing the different sections from which the measurements have been made; each zemindar can look to the portion of the embankment which covers his own estate, but the sections are taken in an extended scale. As for cost of labour, the Public Works rates and local rates paid by private individuals are apt to differ, and unless some superior authority like the Collector intervenes, no proper control can be exercised upon the estimates. I think a paragraph should be added pointing out the difficulties in the way of the zemindar in checking estimates."

"*Remarks by Messrs. Dampier and Harrison.*—The above note has been made by Maharajah the Hon'ble Joteendro Mohun Tagore, to whom, as being much interested in the subject-matter of this report, it has been shown. Colonel Haig has left, and the Committee is no longer complete at the time when the notes are received; hence the remarks added to this note, and to those attached to paragraphs 43, 44, 49, and 53 are those of Mr. Dampier and Mr. Harrison only. We admit that the zemindar has great difficulties to contend against in effectively checking the Engineer's estimates, but they are different altogether, not merely in degree, but in kind, from those we are referring to above. The Collector and the Superintending Engineer have no separate establishment at all wherewith to check the Engineer's estimates. If the estimates represent a breach as 120 feet long and 11 deep, it is quite impossible for an officer who cannot visit the spot to say that it is only 100 feet long and 9 feet deep, or if the Engineer states that a certain embankment was over-topped in a recent flood, it is impossible for him to say that it was not. The zemindar has an ample local establishment to enable him to check the estimates, but his difficulty is that he cannot understand them. The estimates are prepared, hoodah by hoodah, and mile by mile, and it is no doubt very difficult for a zemindar to say for certain that there is not the amount of earthwork to be done which the estimates represent. This could be remedied if it were provided that any zemindar might by previous application be present in person or by deputy when the measurements are made. So very few zemindars make any effort to check the estimates that it would only be an obstruction to business to require any notice to be served on them all, but it might be prescribed that if any zemindar applied specially to be kept informed of the day when the work actually done would be measured up, previous notice of not less than five days should be given him to enable him to be represented."

Baboo Kristodas Pal quite agreed with his colleagues in Committee that it might be difficult to serve notice on all the zemindars interested, but some provision, he thought, might be made to the effect that the Engineer should frame his estimates in consultation with those interested, and he would then take the necessary steps before submitting his estimates. It was for this reason that he wished to add this clause. If the zemindar and the Engineer could be made to act conjointly in the preparation of estimates, it would greatly reduce disputes and litigation.

The Hon'ble Mr. Dampier said it was very unpalatable for him, motion after motion, to have to oppose his hon'ble friend, when he really agreed heart and soul in the principle of the amendments which he proposed. He certainly agreed that an Engineer preparing estimates and plans, the results of which were eventually to be paid for by the zemindars, would not be doing his duty if he refused to listen to those interested when they wished to point out that the work could be done as effectively in a more economical manner.

The Hon'ble Kristodas Pal.

But when introducing this Bill, MR. DAMPIER had particularly said that it was a Bill which must be supplemented immediately by the issue of rules and orders by the Lieutenant-Governor on the executive side He would give an instance to show why he objected to the introduction of these apparently harmless little words. His hon'ble friend had said that he did not ask for the service of notices, but imagine a case going into court, and the point turning upon the question whether the estimates were prepared "so far as it may be practicable in consultation with the persons interested in the work." It would be argued that notices had not been served and therefore all that was practicable had not been done and that the law had consequently not been complied with, and then all the proceedings might be upset on this point. Another illustration might be given from the very extract which the hon'ble member had read to the Council. The Committee to which his hon'ble friend referred was an Official Committee, consisting of Colonel Haig, Mr Harrison, and Mr. Dampier, who were appointed to report upon the working of Act VI (B C) of 1873, with reference to Midnapore. Why then did they show their report to Maharajah Joteendro Mohun Tagore? Simply because it was their duty to make their report, to use the words of the amendment, as far as possible on consultation with persons interested. There was no doubt that the Maharajah was very much interested in the question, and therefore the Committee thought fit to consult him, and MR. DAMPIER had no doubt that more or less every Collector who was interested with the working of the Act would do the same. But he objected to the introduction of these words because their only effect would be to give another opportunity for finding flaws in the proceedings, if inadvertently some omission took place in the service of notices and the like.

HIS HONOR THE PRESIDENT quite agreed with the principle of the amendment, but he thought the introduction of the words proposed would make it very difficult to put the Act into force. He thought it ought to be left to the Government to take the necessary measures to see that those interested should have an opportunity of representing their views, and he had no doubt that in the rules passed under the Act provision would be made for the purpose. As he had said before the scope of the amendment was entirely in accordance with the principle upon which this Act was being passed, and with present practice: indeed, it was the policy of giving those interested in embankments a better and safer position than they had before, which led to this Bill being brought forward.

The amendment was then by leave withdrawn.

AMENDMENT OF THE EXCISE ACT.

THE HON'BLE MR. REYNOLDS moved for leave to introduce a Bill to amend the Bengal Excise Act, 1878. He said he felt that he ought to ask the indulgence of the Council in rising to ask for permission to introduce a Bill for the amendment of an Act which had been amended only last year, more especially as the amending Bill of last year was in his charge. But his excuse was that the weak points of an Act were apt to remain undetected until they were brought to prominent notice by the experience gained in the practical working of the law. In this case he believed there could be no difference of

opinion as to what the intention of the Legislature was, but the language which was used in the Act was unfortunately such as to carry out that intention somewhat imperfectly, and the result had been that when an attempt was made to put the law into operation against a supposed offender, the High Court set aside the conviction which had been obtained before a Magistrate, and pronounced that no offence against the law had been committed. If hon'ble members would refer to the Excise Act of 1878, they would find that section 15 prescribed certain definite quantities for the retail sale of exciseable articles, and it was provided that, subject to any other special direction by the Board of Revenue, the sale of such articles in larger quantities than those specified should be held to be a sale by wholesale, and that a sale in less quantities should be a sale by retail. Then section 17 provided that no person who was not a licensed vendor should have in his possession a greater quantity of any exciseable article than that specified in section 15. And the corresponding penalty section was section 61, which declared that any person other than a licensed manufacturer or vendor, or a person duly authorised to supply licensed vendors, having in his possession any greater quantity of any exciseable article than the quantity specified for each article in section 15, without a pass from the Collector, should be liable to fine.

The quantity of tári specified in section 15 was 12 seers. MR. REYNOLDS thought it was possibly the case that the specific quantities mentioned in the Act were not very carefully considered before the Act was passed, because it might have been thought that as a discretion had been reserved to the Board of Revenue to alter those quantities, it was a matter of no great importance what exact quantities were specified. But, however, that might be, the Board found it necessary to reduce the quantity in respect to tári from 12 to 4 seers; and that reduction was duly notified. A man was subsequently prosecuted for having in his possession 6 seers of tári, being a quantity in excess of the quantity authorised to be kept by persons who were not licensed vendors; he was convicted by the Magistrate, and sentenced to a fine, but on the case being referred to the High Court, the Court decided that no offence had been committed under section 61, because that section referred to the quantities *specified* in section 15 and did not cover any different quantity which might be notified by the Board under the power vested in it. MR. REYNOLDS did not wish to find fault with the decision of the High Court. Section 61 being a penal section, the obvious principle of law was that it should be strictly construed, and when so construed it did not cover the altered quantity of tári prescribed by the Board.

The object of this Bill was simply to remove this blemish, and to carry out what was no doubt the intention of the Legislature, that the penalty provided by section 61 should apply not only to the actual quantities enumerated in section 15, but also to any variation of those quantities which the Board might notify under the wording at the beginning of the section, which reserved to the Board the power to alter any of those quantities.

The HON'BLE AMEER ALI said that as the hon'ble mover was about to amend the Act he thought it would be advisable to take this opportunity to

explain the meaning of the word "possession" in section 61. There had been a case lately before one of the Presidency Magistrates in Calcutta which gave rise to a discussion as to the meaning to be attached to the word "possession," viz. whether a person who was simply a transmitter of imported exciseable articles which were to be despatched to places out of Calcutta, had "possession" of such articles within the meaning of the Act. As some difficulty had arisen on account of the wording of the section, probably the hon'ble member would take this opportunity to make the meaning of the word "possession" clear, so as to leave no doubt in the matter.

The motion was agreed to.

The Council was adjourned to Saturday, the 15th instant.

Saturday, the 15*th April* 1882.

PRESENT:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding.*
The HON'BLE A. PHILLIPS, *Officiating Advocate-General.*
The HON'BLE H. L. DAMPIER, C.I.E.
The HON'BLE H. J. REYNOLDS.
The HON'BLE H. A. COCKERELL, C.S.I.
The HON'BLE D. M. BARBOUR.
The HON'BLE T. T. ALLEN.
The HON'BLE AMEER ALI.
The HON'BLE BHUDEB MOOKERJEE, C.I.E.,
and
The HON'BLE MOULVIE MAHOMED YUSUF.

EMBANKMENTS AND WATER-COURSES.

THE HON'BLE MR. DAMPIER said that before moving that the Bill to amend the law relating to embankments and water-courses be passed, he might just mention that it had occurred to him that it would be better to put the penal sections of the Act into a separate part by themselves. Part VII was a miscellaneous one and was very lengthy, containing a variety of provisions besides the penal clauses, and it was usual to put the penal sections into a Part by themselves. He therefore proposed that the Secretary be instructed to do this. Then there was an amendment just brought to Mr. DAMPIER's notice in section 94, which made certain parts of this Act applicable to Orissa. Section 18 was one of the sections which were extended by section 94. That section had two clauses, but clause (*a*) he found was already contained in the Orissa Act, and clause (*b*) was unnecessary; therefore his first amendment in section 94 was to omit the figures "18." The other amendment was this—Section 76 was one of the sections to be extended to Orissa, and it was proposed to add to section 94 the words "the words "Superintendent of Embankments" being substituted for the word

'Collector' in clauses (*a*) and (*b*) of section 76." Section 76 was the penal section which provided that when a tract of country had been notified by the Lieutenant-Governor, alterations might not be made without the sanction of the Collector (as the Bill now stood), but in Orissa the Superintendent of Embankments would be the officer whose permission would be necessary.

The amendments were severally agreed to.

On the motion of the HON'BLE MR. DAMPIER the Bill was then passed.

AMENDMENT OF THE EXCISE ACT.

The HON'BLE MR. REYNOLDS moved that the Bill to amend the Bengal Excise Act, 1878, be read in Council.

The motion was agreed to.

The HON'BLE MR. REYNOLDS also moved that the Bill be referred to a Select Committee, consisting of the HON'BLE MR. ALLEN, the HON'BLE AMEER ALI, the HON'BLE MAHOMED YUSUF, and the Mover, with instructions to report in a fort night. He explained that the Bill, as introduced, was of so simple a character, being nothing more than a verbal amendment of the law, that he had intended to ask the Council to dispense with the formality of referring the Bill to a Select Committee, and to pass the Bill that day. But since he had taken charge of his office at the Board of Revenue, he found that his predecessor had proposed four or five other amendments of the law, some of them of a more important character than those contained in the Bill. He therefore thought it necessary that the Bill should be referred to a Select Committee.

The motion was agreed to.

ADJOURNMENT OF THE COUNCIL.

HIS HONOR the PRESIDENT adjourned the Council for a fortnight, and in doing so he said :—" Before that day arrives, I shall have left India and made over office to my successor. Therefore, before leaving, I wish to take this opportunity of saying farewell, and of thanking you for the very great assistance you have given me in the work of this Council. We have not attempted to legislate in this Council merely for the sake of legislation, and we have introduced no measures into the Council until they have been proved to be necessary, either for administrative purposes or in consequence of distinct demands from the public; and we have, as long as I have known the Council, attempted to keep rather behind than in advance of the public demands for legislation. But I think our Statute-book shows that we have passed some very useful measures during the last few years. Our sittings here have not been very lengthy or tedious, but they really represent a very small portion of the time which has been given up by you to the irksome and severe work of sittings in Select Committee. You all know how very much of the time of members is taken up in this way, and that it is done with great sacrifice, all of you having other duties to attend to."

The Council was adjourned to Saturday, the 29th instant.

By order of the President the Council was further adjourned to a day of which notice would subsequently be given.

Saturday, the 9th December 1882.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding;*
The HON. A. PHILLIPS, *Acting Advocate-General.*
The HON. H. L. DAMPIER, C.I.E.
The HON. H. J. REYNOLDS.
The HON. C. P. L. MACAULAY.
Colonel the HON. S. T. TREVOR, R.E.
The HON. T. T. ALLEN.
The HON. KRISTODAS PAL, RAI BAHADOOR, C.I.E.
The HON. J. E. CAITHNESS.
The HON. BHUDEB MOOKERJEE, C.I.E.
The HON. MAHOMED YUSUF.
The HON. HARBUNS SAHAI.

STATEMENT OF BUSINESS BEFORE THE COUNCIL.

HIS HONOR THE PRESIDENT said:—"Gentlemen; before we proceed with the business before the Council, which is almost of a formal nature, I wish to say a few words regarding the character of the Bills which are likely to come before us for consideration this session. I should have been glad if I could have congratulated you in reassembling for legislative work this year, if we could have done so in the new Chamber which is preparing for us in the Secretariat building in Dalhousie Square. But circumstances have prevented the completion of this building, and we are obliged to continue our labours in this Chamber, which so long has been associated with the legislative work of Bengal. One feels a natural regret in parting from a place like this, which has so many associations connected with it; for I believe I am right in saying that it was in this room that Lord Dalhousie sat when he presided over the first Legislative Council of India, describing it as "the cradle" of legislative institutions in this country. Since then things have very much developed, and our legislative work is done very much more by means of representative bodies. We have not only non-official members assisting in our work of legislation, but gentlemen connected with different provinces are members of our Council, and bring to bear upon its deliberations a wider scope of knowledge and experience. I also remember that it was in this room that Mr. James Wilson introduced the first measure of direct taxation when he introduced the Bill for the establishment of an income-tax in India—a measure which, some of our honorable members will remember, created a good deal of discussion and excitement twenty years ago—a measure which has now developed into the form of the license-tax which prevails throughout India at the present moment. This Chamber is also

connected with the memories of many eminent men, both official and non-official, who have promoted by their advice and assistance the enactment of many useful legislative measures.

The first Bill which will receive your attention is one of which there is a notice on the paper in the hands of Mr. Reynolds. It is connected with the Excise Act, and is a relict of the last session's work. I am glad to find that the proposal he intends to submit to us is to refer the Bill back to the Select Committee, because an honorable member has mentioned to me his wish to propose an amendment, and as there will be very little time to consider to-day the nature of the amendment proposed, it is desirable that what he wishes to suggest should be considered by the Select Committee when the Bill comes before them, and we shall then be prepared to discuss the merits of his proposal more fully than we should have been if it had been brought forward for the first time before us to-day.

Then there is a small Bill connected with the amendment of the Partition Act. As honorable members are aware, partitions now extend down to an estate of which the sudder jumma is so little as one rupee in the year, and very often in these cases—cases in which the sudder jumma is one rupee or little more—the complications are very much greater than they would be in large estates. The whole array of Government official action is brought to bear on the partition of these estates, and the time, labour, and cost of the operation impose very great hardship and lead to no material good. It has been thought advisable to raise the limit from one to ten rupees, as the limit under which official partitions by Collectors should not be undertaken. In its character therefore it will be but a small measure, though it may involve interests which will require careful consideration. My friend the Hon. Mr. Dampier has taken charge of this measure.

I have also to bring to your notice a measure connected with tramways. As you are aware, the present Act on the subject is limited to the Municipality of Calcutta, and proposals have come before the Government asking for an extension of similar powers to other municipalities throughout the Presidency for the establishment of tramways in their jurisdictions. I have found during my recent travels that the idea of establishing tramways as a public convenience is greatly affected in different parts of the country. There is a proposal made to me for such means of conveyance in the town of Rampore Beauleah, another in the city of Patna, and another in the town of Howrah, and in other places; and in one way or another we have learnt that it is the wish of the people to establish tramways, and legislative powers are required to enable them to carry it out. But in the consideration of this question, it has come to our knowledge that very often tramways which are commenced within municipal limits are capable of being extended, and are to be extended beyond the limits of the municipality. Therefore, in framing a Bill, we have not only to legislate for it as a municipal measure, but to take power which will enable municipalities or the Government, or other local bodies, to carry them on beyond the limits of purely municipal administration. I propose to ask my friend Colonel Trevor to take charge of this Bill.

There is also a question connected with the water-supply to the suburbs; one which affects immediately and is of great interest to a great body of people in the neighbourhood of Calcutta, and which was brought prominently to notice by a pleasant visit which we paid yesterday to the water-works at Pultah, where I had the opportunity of discussing the subject with several members of the Calcutta Municipality and its Chairman. I understand a resolution has been adopted by a Committee of the Town Commissioners, which the Chairman proposes to submit as soon as possible to the Government, as regards their own requirements for the supply of additional water to the city of Calcutta itself; and it is to be hoped that, in giving effect to that measure, we may be enabled, after communication with the Suburban Municipality, to arrange for a supply of good water to the suburbs. The terms on which that extension should be carried out have not yet been settled, and we shall have to refer to the Suburban Commissioners. But if the proposal of the Calcutta Municipality comes before me in a short time, as I expect, I hope that means will be available of coming to some fair and satisfactory settlement of the question of extending the benefits of the water-supply to the suburbs also.

A small Bill connected with the amendment of the Calcutta Police Act has originated from a desire to supervise and control the use of the maidan—a use to which it is constantly put—in breaking in horses; a practice largely objected to as dangerous, as destructive to the beauty of the maidan, and which it requires power to regulate: and a small measure will therefore be necessary to give that power to the police authorities in this city.

There is also a Bill connected with the employment of hill coolies in Darjeeling and Kurseong. My Hon. friend Mr. Macaulay is going to take charge of that Bill, the object of which is to regulate and supervise the registration of coolies in the hill station of Darjeeling. I believe this measure will be ready for introduction, or at any rate for its first stage, at our next meeting.

I should mention too that there is a small Bill required for the amendment of the Calcutta Port Improvement Act, which is pressed on us by the Port Commissioners of this place, and another connected with the amendment of Bengal Act IV of 1879 for the levy of fees on certain passenger boats. The latter Bill, I believe, has not yet been prepared; it is necessary for controlling the management of steamers and vessels which ply more than 30 miles from the port of Calcutta.

These are all passing measures, important in themselves, but not of very large consequence, and they will not probably require very much time or attention on the part of the Council. The prominent measures which will receive our attention are those connected with the new and enlarged system of local self-government. It is not necessary for me now to enter into any detailed discussion of the principles of the question which, by public resolutions of the Government of India, and by the public utterances of His Excellency the Viceroy, have become familiar, probably, to all members of the Council present here. It is a measure which the Viceroy is very anxious to see established throughout the country, and which, speaking personally for myself, I am equally anxious to support as fully as I can. I think, after a rule of a hundred years in India,

it would rather be a disgrace to us than otherwise if we could not say the time has come when we should give to the people of this country a much larger share in the administration of their local affairs. The fact is, however, that in Bengal we can say that a measure of local self-government has already been conceded to the people in a much larger manner than most people are aware of. It has certainly come upon me with some force, in visiting different districts, to find that in the conduct of municipal administration the Municipal Committees and Road Cess Committees and Branch Committees have already a very large share of independence, and that there are places in which the management of local affairs is already, for all practical purposes, in the hands of the natives themselves. I speak therefore of the new measure which will come before the Council as a measure of enlarged self-administration. The form which it is possible legislation on this general subject should take, would be in the way of two separate Bills—one in connection with municipalities, and the second in connection with the establishment of local boards. It is impossible to amalgamate the two Bills into one, because the broadest departure which the new system will take will be in the establishment of local boards. Municipalities have already been in existence for many years in these provinces; and, as I have said, municipalities have already acquired to a large degree, by the training they have received and by the advice and assistance of Collectors and Magistrates, and the co-operation of officials generally, education in the art of self-government, which they are quite willing and able to take into their own hands at once. I think the probability is that there should be two classes of municipalities—though I do not speak with certainty here—one in which the whole freedom of the elective system will be absolutely introduced, with the freedom of electing their own commissioners and the right to elect their own Chairman and Vice-Charman, accompanied by entire freedom of managing their own affairs, except a distant control which will be referred to hereafter. The second class of municipalities will be confined to parts of the country which are not so far advanced, and do not deserve at once that absolute freedom which will be given to more advanced places. But in both of them, as regards the elective system, I will withdraw altogether, as far as I am concerned, the restriction which has hitherto been imposed as to the necessity for one-third of the rate-payers of the town requiring the introduction of the elective system before it can be conceded. If on the representation of any considerable number of inhabitants it is apparent that the desire is to have the elective system in its entirety, and there is no real or deserving opposition on the part of the local officers of the Government, the Government will be ready at once to concede to them that right which the law will give them of having that system introduced. It is impossible to go into details at present, but if you have followed the whole course of writing and discussion which has taken place upon it, I can say at once now that the question of the franchise, of the qualifications which will fit a man either to vote or to be a member, as originally put forward in a resolution which I issued in July last, will be considerably reduced. I think it will be found, by the experience we have gained, that that franchise is too high. I also intend and hope that

it will be secured by the Bill that educational qualifications should give the right to vote and sit as representatives of municipalities.

In coming to the question of local boards, we come to a new thing altogether. We contemplate adopting what we already possess in Bengal—the sub-divisional unit as a head centre of the local board system, and on that basis introducing, wherever we can, local boards to manage the affairs of their own jurisdictions. But it may be quite possible to go a little further in the way of utilising that institution which is the most ancient in India, and which we have attempted to revive on a somewhat sounder basis by the Chowkeedari Act of Bengal, namely the punchayet system; to utilise it as a part and parcel of the local board arrangements. A Committee which is now sitting on the question of the Chowkeedari Act will put before us the facts which may enable us to bring in the punchayet system in villages, going down to the lowest units, as local bodies which can be brought into operation as supplementary to the establishment of local boards in different parts of the province. Generally these will be the outlines of the measure which the Government will submit for your consideration. The Viceroy, in laying down broadly and generally the principles which he desires to see established, has wisely, I think, left very much of the details to the discretion of local Administrations themselves. It is a wise decision I think, because no uniform plan or law will suit the circumstances and conditions of different varying provinces and administrations in India; and what will suit us might well be understood not at all to fit in with the wants of Madras and Bombay. While I have hitherto considered these large matters on my own responsibility with the advice and assistance of my Secretaries, I am very glad to be able to come to you now for advice and assistance to secure for those measures a satisfactory and successful issue.

EXCISE ACT AMENDMENT BILL.

The Hon. Mr. Reynolds moved that the Bill to amend the Bengal Excise Act, 1878, be referred back to the Select Committee for the purpose of considering further amendments therein. He said that the report of the Select Committee had been printed and circulated, and was in the hands of honorable members, and in the ordinary course of things he should to-day have presented it to the Council, and have moved that it should be taken into consideration. But circumstances had occurred which appeared to make it desirable that the Bill should be referred back to the Select Committee for further report. Since the report of the Select Committee was drawn up, a question had arisen regarding the importation of rum from the North-Western Provinces into Lower Bengal. This importation, which dated from the establishment of a large distillery at Shahjehanpore, had now reached about 25,000 gallons a year, whereas the consumption of country rum manufactured in Bengal itself amounted to only about 15,000 gallons. It was therefore desirable, and indeed necessary, to prescribe the rules under which this rum might be imported and

bonded either in Calcutta or in the mofussil. Draft rules had accordingly been drawn up by the Board of Revenue, but on their being laid before the Legal Remembrancer, he was of opinion that the law as it stood did not give the Board or the Government power to pass such rules; and that, if it was desired to lay down any rules on the subject, a section conferring the necessary power must be inserted in the Act.

In addition, however, to this point, it had been brought to MR. REYNOLDS' notice that the clauses of the Bill, as drafted by the Select Committee, were susceptible of some further improvement. In amending sections 15 and 61, it was the object to make the penalty section applicable not only to the possession of larger quantities than the quantities specified in section 15, but to the possession of larger quantities than such quantities as might be fixed by the Board of Revenue. But it was remarked last year by the High Court, in dealing with an appeal which came before them under section 61, that the Legislature could never have intended to give the Board of Revenue power to restrict the specified quantities, but only power to increase them; and it had been suggested to him that this ought to be made clear in the Bill now before the Council. He was quite prepared to admit the reasonableness of making this amendment, but if this was to be done, the quantities specified in section 15 would have to be reconsidered, and it was best that the Bill should be referred back to the Select Committees for this purpose.

There were some smaller amendments which it might be convenient to take the opportunity of making. From a memorial sent up to Government from Eastern Bengal, it appeared that there might possibly be some ambiguity in the use of the word "tari" without a definition explaining the sense in which the word was used, and it would probably be better to introduce a definition, as had been done in the Northern India Excise Act of 1881. It would perhaps also be convenient to explain more clearly the meaning of the word "possession" in section 61.

The HON. KRISTODAS PAL said he rose to support the motion, and in doing so he desired to express his hope that the definition of "tari" would be based on a correct understanding of the article as used by the people of this country. The definition, as it obtained in Act VII of 1878, declared that "fermented liquor" included "tari, fresh or fermented." The words used showed that the definition was very inconsistent; it was, in fact, a contradiction of terms; "fermented" was defined to be fresh or unfermented. The word "tari" really meant the fermented juice of the palm or the date-tree; but fresh juice of the palm or the date was not "tari." But as the word "fresh" was used in the Act, the Board of Revenue in a circular (Board's Rules of 1878, vol. I, page 349) has declared that tari means "the juice of the date-tree or of the tal or palm-tree, and is used either when freshly drawn or after fermentation." The object of the Excise Act is to tax intoxicating articles, but fresh date-juice or fresh palm-juice is not intoxicating, as any one acquainted with the circumstances of the country pretty well knew. But under the operation of the Board's rule, which was derived from the definition of "tari" in the Act, considerable abuse and hardship were committed.

The honorable mover had referred to a petition from Eastern Bengal from which, with the permission of the Council, BABOO KRISTODAS PAL would read the following extract. It was a petition from the Eastern Bengal Landholders' Association, which stated as follows:—

"That the Board of Revenue has defined tari (Board's Rules, 1878, vol. 1, page 349) to be the juice of the date-tree or of the tal or palm-tree, and is used either when freshly drawn from the tree or after fermentation." Your memorialists humbly submit that the first part of this definition is contrary to the language of the country. The word 'tari' is always understood to mean the fermented juice of the tal or of the date-tree, and it is the former that is chiefly used for intoxicating purposes or for leavening bread. The juice of the date-tree, either in the fresh or partially boiled state, is always called khajur ras, and is invariably used either as a cooling drink or for manufacturing gur, or as a substitute for gur in the preparation of puddings or sweetmeats. This khajur ras has no intoxicating power and is never used for intoxicating purposes.

That since the last few years villagers possessing date-trees and using the juice for preparing gur, or as a substitute for gur in the partially boiled state, have been subject to a good deal of oppression. Fines of Rs. 25, Rs. 30, or even Rs. 40 have been imposed on people for having a few date-trees round their homesteads without a license. Your humble memorialists have been greatly pained to hear that very large sums have been realised in the shape of such fines from all the districts in this division. As an incentive to policemen and informers for detecting people dealing in khajur ras without a license, large rewards are given to them out of the fines realised. It is easy to see how wide a door is thus opened to extortion and oppression. For each case sent up there must be a considerable number in which poor ryots are obliged to pay hush-money to policemen and informers on the mere threat of being prosecuted."

BABOO KRISTODAS PAL believed the Government had made some enquiries into the truth of the statements contained in that petition, and his honorable friend was doubtless in possession of the facts which the enquiry had elicited. But it appeared from the last report of the Board of Revenue that the statements of the petitioners were greatly borne out by official records. The chapter on "tari" in the Board's last report contained the following para-graph:—

"During the year under review 30,268 licenses were issued for the sale of tari against 25,562 licenses issued in 1880-81, as shewn in the margin. The increase was chiefly due to the number of additional licenses issued for the sale of unfermented tari in the districts of Dinagepore, Dacca, Backergunge, and Tipperah, owing to the exertions of the local excise officers in suppressing unlicensed sales."

Year.	Fermented.	Unfermented.	Total.
1880-81 ...	16,504	9 058	25,562
1881-82 ...	16,411	13,857	30,268

It might be easily inferred from the foregoing extracts what amount of hardship, trouble, annoyance and loss were inflicted upon the poor people who were engaged in the sale of the fresh juice of the palm or date. Palm-juice, he believed, became fermented in two hours, so practically palm-juice was seldom to be found in an unfermented state. But the date-juice generally, as he was informed by competent persons, did not get fermented till twelve hours after it was drawn from the tree. Honorable gentlemen must have seen in Calcutta persons going about with pots of date-juice for sale, and children delighted in drinking it. Surely, if it was intoxicating, their parents would not have allowed them to drink it. It was the poor man's luxury, and he

hoped the law would not be tolerated which would deprive the poor man of this country of such a cooling, palatable, and innocent beverage. He would not refer to the policy which had led the Government of India to veto the Bombay Act that sought to tax the use of the mohwa flower; but he submitted it would not be consistent with that policy to bring the fresh or unfermented date-juice under excise taxation. He therefore earnestly hoped that the Select Committee would take this matter into consideration.

The Hon. Mahomed Yusuf said he agreed that the Bill should be sent back to the Select Committee, for there were one or two matters which required consideration. One of these was that in certain respects it seemed desirable that certain parts of the Bengal Act should be assimilated to the Imperial Act passed for the North-Western Provinces. In the first place the definition of fermented liquor, as contained in Act XXII of 1881, included both the palm-juice and the *khajur ras*; but at the same time that definition excluded both the fresh palm-juice and the fresh *khajur ras*, and he thought that that definition might well be adopted by the Select Committee in amending the Bengal Excise Act, 1878, and incorporated in it. Secondly, the explanation to section 21 of the said Imperial Act might also well be taken and incorporated in the Bengal Act, which, so far as it dealt with the question of possession, was susceptible of a little improvement. As matters at present stood under the Bengal Act, a question arose before one of the Presidency Magistrates whether a person, who had merely a temporary possession, in the character of a mere transmitter of exciseable articles, could be said to be in possession under section 17, so as to bring him within the penal sections of the law. This question was referred at the time when leave was given for the introduction of this Bill. But with reference to this question of possession, he found in the explanation to section 21 of the Imperial Act that foreign spirit or foreign fermented liquor in the possession of any common carrier or warehouseman as such, or purchased by any person for his private use and not for sale, was not considered as coming within the prohibition contained in that section, and he thought that a similar provision with some modifications should be introduced into the Bengal Act.

There was also another matter which it was desirable should be considered by the Select Committee, and that was in connection with section 15 of the Bengal Act, and related to the power of the Board to increase the quantities enumerated in that section. The quantities therein specified might be reconsidered, and lesser quantities might be specified, if such a course should be considered expedient and desirable; but he thought that on principle, and for the sake of certainty, quantities specified in that section should not be allowed to be decreased by any body except the Legislature, although the Board of Revenue might be entrusted with the power of increasing those quantities at their discretion. These were principally the matters which he believed required consideration with reference to this measure, but he thought one or two other verbal amendments were also required with reference to certain notices to be given by the Collector.

The Hon. Mr. Reynolds said in reply that he thought the question raised by the honorable members who had spoken were questions which would

naturally come under the consideration of the Select Committee, and he would therefore reserve any remarks he had to make in reference to them until the Committee had made their report. He was not aware, until he came down to the Council, that one member of the Committee was absent at present from Calcutta. He therefore wished, with the permission of the President and the Council, to add the Hon. Kristodas Pal to the Select Committee.

The motion was put and agreed to, and the Bill referred back to the Select Committee.

The Council was adjourned to Saturday the 16th instant.

Saturday, 16*th December* 1882.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding;*
The HON. A. PHILLIPS, *Acting Advocate-General;*
The HON. H. J. REYNOLDS;
The HON. H. L. DAMPIER, C.I.E.;
The HON. C. P. L MACAULAY;
Colonel the HON. S. T. TREVOR, R.E.;
The HON. T. T. ALLEN;
The HON. J. E. CAITHNESS;
The HON. KRISTODAS PAL, C.I.E.;
The HON. BHUDEB MOOKERJEE, C.I.E.;
The HON. MAHOMED YUSUF; and
The HON. HARBUNS SAHAI.

AMENDMENT OF THE EXCISE ACT.

THE HON. MR. REYNOLDS presented the report of the Select Committee on the Bill to amend the Bengal Excise Act, 1878. He said he did not propose to take any action upon the report to-day, and begged to give notice that he would, at the next meeting, move that the report be taken into consideration in order to the settlement of the clauses of the Bill.

BENGAL MUNICIPALITIES.

The HON. MR. REYNOLDS moved for leave to introduce a Bill to amend and consolidate the law relating to Municipalities in Bengal. He said: "The Bill which I to-day ask leave to introduce is one of the two measures which you, Sir, indicated in your speech at the last meeting of the Council as the Bills which would probably occupy the greatest part of the time and attention of this Council

during the present session. It is drawn, though with very considerable modifications, on the lines of the existing Bengal Municipal Act V of 1876. It will be supplemented by the Bill for the establishment of local boards, which is in the charge of my honorable colleague to the right (Mr. Macaulay,) and these two measures taken together will, I hope and believe, supply Bengal with as complete a system of local self-government as it is in the power of the Legislature to bestow. The present Bill will deal with the cities and towns, the Local Boards Bill will provide for the villages and rural areas. But I need not remind the Council that this is a matter in which legislation can supply nothing more than the outward form: the real progress will remain to be made, and the real victory will remain to be won, outside this Council Chamber. It will rest with the people of these provinces to infuse spirit and vitality into what will otherwise be nothing more than a dead letter: to show themselves ready to make some sacrifices of their own leisure and convenience: to rise superior to prejudice and party-spirit; and to accept the power which will be placed in their hands as a trust to be administered for the benefit of all classes of the community alike. The Government is fully prepared to do its part in this work: it desires to give the most complete effect to the policy of the Government of India, and it relies with confidence on the sympathy, the loyalty, and the co-operation of the people in shaping that policy to fulfil its highest ends, and in making it fruitful in developing the national character and enhancing the national prosperity.

The Bill is not yet completely drafted, and I will defer any remarks on matters of detail till the Bill itself is in the hands of honorable members; but, with the permission of the Council, I will briefly sketch the main features of the scheme.

The present Act relates to institutions of four different kinds: Municipalities of the first class, Municipalities of the second class, unions, and stations. There are now 26 Municipalities of the first class, 98 of the second class, 52 unions, and 2 stations. These distinctions will not be retained in the Bill. There is really very little difference between the two classes of Municipalities. The classification depends on the number and density of the population; a first class Municipality must have 15,000 inhabitants, and at least 2,000 inhabitants to the square mile.. But the constitution and powers of the two classes of municipalities are substantially the same. The only differences are that a first class Municipality has a somewhat larger number of Commissioners: it has a higher money limit as regards the making of contracts and the signing of orders for the payment of money; and it enjoys the right of availing itself of the provisions of Act VI of 1878, regarding the cleansing of latrines. In all other respects the two classes of Municipalities are already on the same footing; and it is not intended to make any distinction between them in the present Bill

Unions and stations are constituted, under the present law, in those towns or villages, or groups of villages, which are not of sufficient wealth or importance to be treated as Municipalities. They have hitherto been a sort of debateable ground: but the establishment of local boards will solve any difficulty which may be felt at present in dealing with places of this kind.

The more advanced unions and stations will be raised to Municipalities; and the rest will be placed under the control of the local boards.

As regards the municipal constitution, it is the intention of the Government to introduce the elective system into all important municipalities: and this intention will be shown in an unmistakeable way in the wording of the Bill. It will be provided that the system of nominating Commissioners by election by the rate-payers shall apply to all Municipalities except those which the Lieutenant-Governor may exclude from the privilege. Experience has shown that the provision in section 16 of the existing Act, which requires an application from one-third of the rate-payers before the elective system can be introduced, has had a very different effect from that which it was designed to produce. Its original object was to prevent the elective system being forced by an over-zealous Magistrate on a Municipality which did not really desire to adopt it. But its practical result has been to debar many important Municipalities from the privilege, owing to the difficulty of obtaining the necessary number of signatures. Recent enquiry has shown that the feeling in favour of the elective system is very general: and this system will accordingly be adopted as the rule, and not as the exception.

There will be no *ex-officio* Commissioners: but one-third of the total number of Commissioners will be nominated by Government. The Bill will retain the proviso of section 15 of the present Act, that not more than one-fourth of the Commissioners shall be salaried officers of Government unless such persons are elected by the rate-payers.

The next important point is that of the nomination of the Chairman, and here a distinction will be made between those Municipalities which will be authorized to elect their own Chairman, and those which may not desire, or may not be considered qualified, to exercise this power. The Bill will provide that the Lieutenant-Governor may either appoint a Chairman or may call upon the Commissioners to elect a Chairman subject to his approval. Any person so appointed or elected will become a Commissioner, will hold office for three years, and will have the right to vote upon all questions. The present provisions of the law relating to the election of Vice-Chairman will be retained, but the term of office will be extended to three years. The Commissioners will be authorized to grant salaries, if they desire to do so, to their Chairman and Vice-Chairman, and to other subordinate officers of the Municipality.

The remaining provisions of the Bill relate principally to matters of detail, and any remarks upon these may be deferred till I am in a position to lay the Bill itself before the Council. It may be said generally that the policy of the Bill is to give very large powers to the Commissioners, but that many of the sections conferring these powers will apply only to those Municipalities to which they may be extended at the request of the Commissioners themselves. Some procedure of this kind seems necessary in order to give the Bill that degree of elasticity which will adapt it to the necessities of a large number of Municipalities in very different stages of development. To meet the requirements of the more advanced towns, provisions will be introduced regarding the supply of filtered water, and the lighting of the streets with gas; but no attempt

will be made to force arrangements of this kind upon places which do not desire their introduction. As the great majority of the Municipalities will be elective, it may be anticipated with some confidence that by making the application of these sections dependent on the request of the Commissioners, we shall really be consulting the wishes, and safe-guarding the interests, of the general body of rate-payers in each Municipality.

It is unnecessary, I think, that I should dwell longer upon matters of this kind. The really important sections of the Bill are those which relate to the constitution and powers of the Municipality; and in respect of these it will be found that the Government, while reserving to itself a certain measure of control, and a certain amount of influence, has deliberately adopted the principle that the general management of municipal affairs shall be left in the hands of the people themselves and of their elected representatives."

The motion was agreed to.

AMENDMENT OF THE ESTATES PARTITION ACT.

The Hon. Mr. Dampier moved for leave to introduce a Bill to repeal section 11 of the Estates Partition Act, 1876, and to provide that no separate estate, liable for an annual amount of revenue less than ten rupees, shall be created under the provisions of this Act. He said that he felt at some disadvantage in asking the Council to turn their attention from the large and really important subjects of public development, of which his honorable friend Mr. Reynolds had just been treating, to this minute Bill, which would affect units where the other measure would bear upon thousands. The motion which stood in his name was in fact an appeal from the Executive Government to the Legislature to relieve them from a duty which had become intolerable, of which the performance was no longer required by the magnitude of the interests which it affected. For the grounds on which this statement was founded, he turned to the Board of Revenue's letter of last year, addressed to the Government. Mr. Reynolds wrote from the Board:—

"The main ground on which the Board based their opinion that there should be some restriction on butwaras is the intolerable harassment, labour, and expense which these petty butwaras impose upon the officers of Government, not only in effecting them in the first instance, but in their consequences in perpetuity. The first cost is partly met by the proprietors, although not entirely, as they pay nothing for the work of the Collectors, the Commissioner and the Board. The result, however, is a permanent increase of expenditure and work in the revenue offices without any proportionate benefit to anybody; and in order to meet this pressure additional establishments have to be entertained, which are paid for from General Revenues, or, in other words, the ryots of districts and provinces, where a partition is never heard of, have to pay for the *butwara*-loving propensities of the zemindars of Patna and Mozufferpore."

Another reason for putting a limit on minute sub-divisions was the danger to the Government revenue. Very small estates were often absorbed into others and disappeared. This he mentioned only as a make-weight, but he took his stand on the public inconvenience caused by these small partitions.

A third reason which might be urged was the economical effect of these very small sub-divisions in creating landlords who were poor and without the power of improving their estates.

Regulation VI of 1807 placed a restriction on the making of *butwaras*. It provided that no estate which paid less than a revenue of Rs. 1,000 could be divided, and that no estate could be formed by partition whose revenue was less than Rs. 500 a year. These restrictions remained in force for three years and were removed by Regulation V of 1810, of which he must read the preamble. The reason for removing the restriction was this —

"Moreover, there being reason to believe that the restriction which has been laid on the partition of small estates by Regulation VI of 1807 has been, and is, the cause of considerable injury to numbers of individual sharers in such estates, thereby inducing a sacrifice of private rights which the degree of public inconvenience arising from the minute division of landed property does not appear to be of sufficient magnitude to justify or require."

He would call particular attention to those last words. It would be observed that both in the Act which imposed a limit, and in that by which it was afterwards removed, it was acknowledged that the question of imposing a limit depended on the balance between the degree of public inconvenience caused by making minute partitions, and the private interests affected. He would endeavour to show that the public inconvenience caused had now reached a formidable magnitude, and he would also show that the importance of this right to claim *butwara* for the protection of private interests was now much less than it used to be.

In 1848 a discussion was raised by Mr. Alexander Forbes, the Collector of Purneah, as to the public inconvenience of making these *butwaras* through Government officers, and also as to the general policy of forcing coparceners into the obligation of making these partitions against their will. He remembered that gentleman used to compare it to forcing three persons to take a hand at whist, and play for large stakes, because the fourth man wanted a rubber. The then local officers were very strongly in favour of the imposition of a limit at any rate, but the Board refused, because there was no evidence before them of sub-division to an injurious extent then existing. He begged to call the attention of the Council to the fact that in this refusal the same principle was recognized; when the public inconvenience should be great enough to warrant it, then a limit might be imposed.

In 1864 matters in Tirhoot grew serious; the Collector represented that the number of these *butwaras* and their minuteness were getting beyond all reason, and a Bill was actually under the consideration of Sir George Campbell for imposing a limit of Rs. 10, when the famine caused it to be shelved.

In 1875 Mr. Dampier had the honour to lay before this Council and carry through it a Bill to amend the *butwara* procedure, and in that Bill, as first passed by this Council, a minimum of Rs. 10 was imposed as the *jamma* of any estate which should be created by *butwara*. No estate could be formed by *butwara* under that Bill whose sudder *jumma* was less than Rs. 10, unless the proprietors of such estate were prepared to redeem the land revenue by the payment of a capitalized sum equivalent to the annual revenue. The

Governor-General in Council vetoed the Bill with regard to this particular clause, but not in consequence of the limit, and not for any reason connected with the limiting of *butwaras*, but on the question of redemption of revenue. His Excellency said that it was against the accepted policy to allow redemption of revenue for estates above one rupee. The Bill was returned; and this Council modified it in this respect, and after considerable discussion the limit was fixed at one rupee; it was provided that an estate paying less than one rupee a year could not be created unless the proprietors were prepared to redeem the amount of revenue payable on it. The Council would here observe that this Act was assented to by the Governor-General in Council, and that there was no objection on the ground of a limit being imposed upon *butwaras*.

In 1879 the Board of Revenue moved again. MR. DAMPIER had stated that he would first show that the degree of public inconvenience had become of great magnitude. In the Tirhoot district in twenty years the number of estates borne on the roll had risen from 630 to beyond 1,000. In the Patna Division in twenty years they had risen from 24,000 to 46,000, and in that division 666 cases of butwara were pending, of which nearly one third would create estates with *jummas* of less than ten rupees. He thought that these figures were enough to show that the pressure on the executive was very great.

He would next endeavour to show that the right of claiming partition of lands was of much less importance now than formerly as regards the protection of private interests. When Regulation V of 1810 spoke of injury to individual sharers, and indeed up to 1859, the whole estate was at once and immediately liable to sale for any arrears of revenue which might be allowed to accrue upon it; if one of the coparceners in a joint estate defaulted, his default entailed immediate liability of the whole estate to sale. That was the state of things up to 1859. In that year, however, a great boon was given to proprietors of joint estates in enabling them to call on the Collector to keep separate accounts in respect of payments made by each separate co-sharer. The effect of that was that if any one sharer in an estate in which separate accounts had been opened fell into arrears in respect of the payment of revenue on account of his interest in the estate, the Collector did not proceed at once to summarily sell off the whole estate, but he first put up for sale the right and interest of the defaulting sharer or sharers only in the estate. In nine cases out of ten, or ninety-nine out of one hundred, this resulted in the payment of the amount which was in arrears, and there was an end of the matter; the non-defaulting sharers were in no way injured; it was only in the hundredth case, when the sale of the defaulting proprietor's interest did not cover the amount of arrears, that the Collector was obliged to proceed to the extreme measure of putting up the whole estate for sale and enforcing the right of the Government to its revenue from the whole.

Then there was another legislative measure (Act VII of 1876) which insisted on individual proprietors in joint estates defining the extent of their interests in those estates. This of course facilitated the opening of separate accounts and prevented disputes as to the quota of revenue to be paid by respective sharers.

He hoped that after these remarks the Council would have no objection to allow him to introduce the Bill.

The motion was agreed to.

CONTROL OF COOLIES IN HILL MUNICIPALITIES.

The HON. MR. MACAULAY moved for leave to introduce a Bill for the general control of coolies in Hill Municipalities. He said that the wording of the Title and of the Interpretation clause would be made general in order to admit of the future extension of the Act to any Municipality to which the Lieutenant-Governor might consider its provisions suitable, and which he might declare to be a Hill Municipality; but, as the Council would have gathered from the opening address of His Honour the President, the necessity for legislation immediately arose in Darjeeling. That some enactment was urgently required for the protection of the public was obvious to any one who had had experience of Darjeeling in recent years, and it was probably well known to all whose friends had visited the station, or who had given any attention to the complaints of travellers in the public prints; and it would therefore be unnecessary for him to trespass at any great length on the indulgence of the Council. The rapacity and insolence of the coolies, and particularly the *dandymen*, of Darjeeling, had in fact reached such a point as to form a serious menace to the popularity and prosperity of the only sanitarium in this Province. Even permanent residents experienced considerable difficulty in dealing with these men on reasonable terms; but visitors were absolutely at their mercy. The most extortionate rates were charged, and the service rendered in return was performed as a favour rather than as a duty. Expostulation regarding absence from work, idleness, or turbulent, demeanour only evoked insult, and any attempt to assert the ordinary rights of the employer resulted in the wholesale desertion of the men, who prevented others from taking their place. Since the last meeting of the Council he had received a letter on the subject from Lord Ulick Browne, the Commissioner of the Division, than whom no one took a livelier interest in all that concerned the comfort and pleasure of visitors to Darjeeling. Lord Ulick Browne wrote:—"The complaints during last season, and especially of ladies without male relatives, were worse than ever." In fact these men proceeded on the principle that the visitor's necessity was the *dandyman's* opportunity. He had himself witnessed a case in which an invalid, too ill to walk or ride, on the point of starting to take some fresh air, was informed by the *dandymen* that they declined to carry him a few hundred yards unless they were paid double the already extortionate rate paid the day before for the same service. Nor did these men make any invidious distinctions of race. He had been much impressed upon one occasion by seeing a native gentleman, who, though of spare and muscular form, was averse to pedestrian exercise, being carried round the station by five robust *dandymen*. And this was no idle exhibition of state, for the victim had complained bitterly of the various impositions to which he had been subjected. Visitors to Darjeeling declared that it would be a perfect

place, but for the rain, the leeches, and the *dandymen*. The rain obviously could not be interfered with; and we must only hope that the activity of the destructive instincts of visitors would in time make some impression on the leeches. But the *dandymen* could be at once controlled, and he trusted that the Council would consent to interfere for their regulation and the removal of a serious ground of public complaint. He proposed that the Act should follow the lines of the law for the regulation of hackney carriages and palankeens, providing for the issue of licenses and badges, for the fixing of a tariff of charges, and for the infliction of appropriate penalties for neglect or general misconduct.

The motion was agreed to.

The Council was adjourned to Saturday, the 23rd instant.

Saturday, the 23rd December 1882.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding;*
The HON. H. L. DAMPIER, C.I.E.;
The HON. H. J. REYNOLDS;
The HON. C. P. L. MACAULAY;
Colonel the HON. S. T. TREVOR, R.E.;
The HON. T. T. ALLEN;
The HON. KRISTODAS PAL, RAI BAHADOOR, C.I.E.;
The HON. J. E. CAITHNESS;
The HON. BHUDEB MOOKERJEE, C.I.E.;
The HON. MAHOMED YUSUF; and
The HON. HARBUNS SAHAI.

AMENDMENT OF THE EXCISE ACT.

THE HON. MR. REYNOLDS moved that the further report of the Select Committee on the Bill to amend the Bengal Excise Act, 1878, be taken into consideration in order to the settlement of the clauses of the Bill. He said that three of the sections to which reference was made in the report of the Select Committee were sections in regard to which amendments had been placed on the notice paper, and therefore he would reserve his remarks upon these sections until he had heard what the Hon. Mover of those amendments had to say. He would therefore only refer at present to the amendments made by the Committee in those sections mentioned in the report which were uncontested. A definition of licensed vendor or manufacturer had been inserted in order to make it clear that the words referred only to persons under the Bengal Excise Act, and not to vendors or manufacturers who might have obtained licenses from other Governments in other Provinces. Then with regard to the section giving the Government power to lay down rules for the

importation and bonding of exciseable articles manufactured in British India beyond the limits of the territory to which the Act extended, he had explained at the last meeting of the Council the reasons which made legislation necessary, and the Council would find that the section was a very simple one, and merely gave the power which the legal advisers of Government had declared to be indispensable. The Committee had also provided in sections 29 and 30 that notice of the recall or of the surrender of a license must be in writing, which seemed reasonable and proper. And the amendment in section 61 was in accordance with the Northern India Act of 1881 and the judicial decisions which had been passed to the effect that the penalty attached to unauthorized possession did not extend to such possession by any person merely as a carrier or warehouseman. The only other alterations made by the Committee were verbal amendments in sections 53 and 60 of the Act.

The motion was agreed to, and on the motion of MR. REYNOLDS, the clauses of the Bill were considered for settlement in the form recommended by the Select Committee.

The HON. KRISTODAS PAL said the first of the amendments which he had to move had reference to the definition of tari. It was taken from the Northern India Excise Act of 1881. Tari was defined to mean the sap of any kind of palm-tree. The amendment of which he had given notice was to insert after the word "tree" the words "except fresh date-juice," but since coming to the Council Chamber, it was suggested by his hon. friend opposite (Moulvie Mahomed Yusuf) that it would be better to insert the word "unfermented" before the word "sap." The definition would then run as follows:—"Tari means the unfermented sap of any kind of palm-tree." He mentioned the proposed alteration of his amendment to the Hon. Mover, who had no objection to it. BABOO KRISTODAS PAL therefore adopted it. He had explained to the Council at a previous sitting why the fresh juice of the date-tree should not be treated as an exciseable article. The fresh date-juice, on which he laid particular stress, was used as an article of food or drink, and had no intoxicating effect whatever. On this point he had since consulted a friend of his, Baboo Kanye Lall Dey, Rai Bahadoor, who was a well known chemist, and he put him certain questions to which he obtained the following replies:—

Question.	*Answer.*
1. Is fresh palm or date-juice intoxicating?	1. No.
2. When does vinous fermentation of date-juice commence after it is taken from the tree?	2. Date-juice fresh drawn from the tree, if kept in a clean earthen pot and exposed to the sun, will begin to ferment after 10 hours; if mixed with little rice or flour and similarly exposed it will begin to ferment within about two hours; the vinous fermentation will commence much quicker if date-juice is kept in an used pot?

With regard to palm-juice, his friend referred him to a paper of his own on the use of intoxicating stimulants, in which he remarked that when drunk fresh from the tree at day-break or candle-light, the juice of the palm was quite innocuous. He added—"It is a cool and refreshing drink, often recommended for its diuretic properties to those labouring under urinary diseases."

Now the question which BABOO KRISTODAS PAL submitted was whether it would be quite consistent with the policy of the Bill to tax the fresh date-juice or the fresh palm-juice when it had no intoxicating effect. As he had pointed out at a previous sitting, the object of the law was to check the consumption of intoxicating drinks and drugs, but the use of the fresh date or palm-juice was not open to that objection, and consequently he did not think it would be consistent with the acknowledged principle of the excise law to bring them under taxation. He had also then taken occasion to refer to the letter of the Government of India vetoing the Abkari Bill of the Bombay Council which proposed to tax the *mhowa* flower on precisely the same reasons that had been used for the inclusion of fresh palm and date-juice in the Bill before the Council. His Excellency the Viceroy was of opinion that, "except in the districts of Tanna and Colaba, the use of the *mhowa* flower as food is sufficient to constitute a strong objection to the policy of the proposed law."

For the same reasons BABOO KRISTODAS PAL contended that the excise law ought not to be extended to the fresh palm or date-juice. It might be urged that practically it would be difficult to make a distinction between unfermented and fermented date or palm-juice. But he observed that the Excise Department already made a distinction in the issue of licenses for the sale of unfermented date-juice and fermented tari. The form of license ran to this effect—

"Be it known to all concerned that the person abovenamed is hereby authorized by the undersigned, Collector of the abovenamed district, to sell fresh tari under the provisions of section 36, Act VII of 1878, during the months of from 6th November 1882 to 31st March 1883. This license does not authorize the holder to sell tari in its fermented state. By doing so without taking out a separate license the holder will render himself liable to the penalty prescribed by Act VII of 1878 for selling fermented liquors without a license."

It would be thus seen that the Excise Department had practically drawn a broad distinction between fermented and unfermented tari—he should not say "tari," because that was a contradiction in terms. In unfermented state the date-juice was not tari, but was known as *khajur rus*, and was used by the people as such. The distinction made in the form of the license was clear enough, and there would therefore be no practical difficulty in exempting the fresh juice from the scope of the excise law. He need hardly point out that there were many articles of food which by special preparation might be converted into spirituous liquor. He might instance rice, potatoes, sugarcane juice, and the milk of the cocoanut, which he believed was converted into liquor in Bombay. But he had never heard that such articles when used for food were brought under taxation for excise purposes: as articles of food they ought to be exempted from the operation of the excise law.

The HON. MR. REYNOLDS said he could not accept this amendment, and he thought he could show good reasons why the Council ought not to agree to it. In the first place the amendment was, he would not say, of a revolutionary, but at any rate of an unprecedented character. From the speech of the Hon. Mover, and from the paper from the British Indian Association which had been circulated to the Council, it might be thought that this was the first time it had been proposed to impose restrictions on the sale of unfermented tari or date-juice, but so far from this being the case, the fact was that the amendment was in direct contravention of the uniform current of excise legislation for the last seventy years. MR. REYNOLDS had not thought it necessary to go further back than Regulation X of 1813; but in that Regulation he found it declared that tari, whether fresh or fermented, must not be sold without a license from the Collector. Passing on to Act XXI of 1856, which was for a long time the abkaree law for Upper India, the wording there was the same as that used afterwards in the substituted Act X of 1871, which enacted that "all tari, both fresh and fermented, is included in the expression fermented liquors." In the Act of 1881, the present Excise Act for Northern India, the word "tari" was defined to mean the sap of any kind of palm-tree, and it was subjected to excise control. The words of the Bombay Act V of 1878 were very wide indeed. There "toddy" was defined to mean juice drawn from a cocoanut, brab, date, or any kind of palm tree, whether in its fermented or unfermented state; and section 14 of that Act provided that no toddy should be drawn from any tree except under license from the Collector. MR. REYNOLDS thought that all this showed what had been the regular course of legislation not only in Bengal so far as it could be traced back, but also in the North-Western Provinces and in Bombay. This, therefore, was his first objection to the amendment: that it was opposed to the experience and practice of a long course of years.

Secondly, he felt obliged to object to the amendment on account of the danger to the revenue which it involved. It was true that the revenue from unfermented tari was very inconsiderable—only Rs. 23,000; but the whole excise revenue derived from tari was about 6½ lakhs of rupees, and to release unfermented tari from all excise control would very seriously endanger the receipts from the taxation of tari. The revenue from unfermented tari was mostly derived from the Dacca and Chittagong Divisions, and it was from those parts of the province that complaints had been received as to the restrictions put upon the use of unfermented tari. In those divisions there was hardly any revenue from fermented tari; but in the Patna Division, from which no complaints had been received, the receipts from fermented tari were above 4 lakhs of rupees. He could not consent to endanger this revenue by excluding unfermented tari from the operation of the law. What the Government required in the case of unfermented tari was not so much the power of taxation as the power of control, and this power MR. REYNOLDS was not prepared to surrender.

These were two arguments against the amendment, but there was a further reason still. MR. REYNOLDS thought the Hon. Mover of the amendment could not fully have considered the injury which his proposal was likely to do to a cause which no doubt the Hon. Gentlemen had much at

heart—the cause of temperance. The object of the excise policy of Government was the repression of drunkenness; and, this being so, MR. REYNOLDS did not see how the Government could possibly abandon its control over the sale, possession, and consumption of a liquor, which became, by a brief and natural process, a highly intoxicating beverage. The Hon. Member had given the Council some account of unfermented tari and of the time it took to ferment. MR. REYNOLDS had consulted the Chemical Examiner on this point, and that gentleman had informed him that chemically there was no difference between the sap of the palm and of the date; that the time they took to ferment varied according to temperature and atmospheric conditions, but that generally speaking, from six to eight hours might be taken as the average time of fermentation. MR. REYNOLDS did not think it would be consistent with the principles of excise legislation to surrender all control over a beverage which possessed such qualities. In the letter from the British Indian Association, he saw it stated that potatoes were largely used in Ireland for the illicit manufacture of rum, but that no one thought fit to make potatoes an exciseable commodity on that account. That rum was made from potatoes in Ireland would be news to most of the Council, but probably the writer of the l tter meant whisky. Anyhow, MR. REYNOLDS could not but think that the gentlemen of the British Indian Association must have a poor idea of the intelligence of that Council if they thought that a transparent fallacy of this kind could be palmed off upon it for an argument. Where was the analogy or resemblance between a substance that could be converted into spirit only by an elaborate process of distillation, and the sap of a tree which, by merely standing a few hours, without anything being done to it, became intoxicating? If it were the fact that by the operation of natural causes a basket of potatoes would turn within six hours into a gallon of whisky, there might have been some ground for the argument brought forward, but the facts being as they were, it was almost an insult to the understanding of Hon. Members to ask them to accept the two cases as parallel. He thought that, for these reasons, the Council ought not to agree to this amendment.

He wished to add that he did not see that the amendment, even if it were carried, would give any relief which could not be given under the present law. In the first place, in the memorial from the Eastern Bengal Districts, it was alleged that vexatious interference was exercised with unfermented tari, and that this operated as an obstruction to the manufacture of sugar. But section 62 excluded from the operation of the Act tari when supplied or used for the manufacture of goor or molasses: so that no alteration of the law was required in the interests of the sugar-industry. Then, section 14 went further still and allowed the local Government to suspend all the provisions of the Act relating to tari in any district in which the consumption of fermented tari was inconsiderable.

As fermented tari was very little used in those districts in which complaints had been made, this section of the Act gave the Government power to redress any grievance which might exist without the dangerous interference with the principles of excise legislation which would be involved

in accepting this amendment and releasing tari altogether from excise control.

The HON. MAHOMED YUSUF said that he supported this amendment, namely, that tari should be defined as meaning the "*fermented*" sap of any kind of palm tree, and the reasons for which he supported it were these. He submitted that this definition of "tari" was in effect the same as that which was found in the Imperial Council's Act XXII of 1881 for the North-Western Provinces; for in that Act he found that in section 3, clause (*e*), tari was first defined as meaning the sap of any kind of palm-tree. That would at first sight include unfermented as well as fermented tari, but clause (*f*) of the same section provided that "fermented liquor means malt liquor, wine, pachwai, and *fermented tari*, and in any provisions of this Act shall, if the Local Government, subject to the control of the Governor-General in Council, so directs, include any other fermented liquor, and also tari, though it may not have perceptibly begun to ferment." This was in effect the definition now proposed by the amendment, because, under the Act of 1881, what was taxed was not tari, but "fermented liquor," and until the Local Government had taken action in the matter, unfermented tari was not, by virtue of anything expressly contained in the Act, included within "fermented liquor." That being the state of the law in the North-Western Provinces, the next thing was to consider how the law had stood before the Act of 1881 was passed, whether that Act had simply declared the then existing law, or whether there was any change made in that law by the Act of 1881; and if the existing law was altered by the Act of 1881, whether this Council would not also be justified in making a similar change in the law as it stood at present for Lower Bengal. The Act which preceded Act XXII of 1881 was Act X of 1871, and in that Act it was provided by section 16 that "all the provisions relating to the sale or possession of fermented liquors apply to the sale or possession of *tari, whether in a fermented state or otherwise, and all tari, both fresh and fermented, is included in the expression 'fermented liquors.'*"

It is thus quite clear that, like the Act of the Bengal Council under consideration, the Act which preceded Act XXII of 1881 in unmistakable terms included both fresh and fermented tari in the definition of "fermented liquors." His contention was that the Act now under consideration, although it was in the same terms as the above section of Act X of 1871, should be amended as far as the question of tari was concerned, so as to make it in conformity with the Act of 1881. He thought also that the sum total of the reasons bearing on this question rather pointed to the conclusion that the Council should adopt the proposed definition, which he supported the more readily and with greater confidence, now that it was found that it was similar to that adopted for the North-Western Provinces, by which unfermented tari was excluded from the definition of "fermented liquors."

He thought that there was nothing peculiar in the law of Bengal showing why the proposed definition should not be adopted; but on the other hand, if the law of Bengal were to be compared with that of the North-Western Provinces, the circumstances would be found more clearly in favour of the amendment. The

short history of the law was this. The first Regulation on the point was Regulation XXXIV of 1793, and from that Regulation it was only necessary for him to read the preamble and one or two sections. The preamble was as follows:—

"The immoderate use of spirituous liquors and intoxicating drugs having become prevalent amongst many of the lower orders of the people, from the very inconsiderable price at which they were manufactured and sold, and the proceedings of the criminal courts having evinced that the robberies and other disorders committed in the country were in a great measure ascribable to the want of proper restrictions on the manufacture and vend of such liquors and drugs, the Governor-General in Council, with a view to prevent the perpetration of crimes, and at the same time to augment the public revenue, passed certain rules on the 6th of April 1790 and subsequent dates. Those rules are now re-enacted with modifications."

Then section 12 of that Regulation made this provision—

"A tax shall be levied on toddy at the rate of twenty-five per cent. on the amount of the rents specified on the pottahs granted by the proprietors of the toddy-trees to the pausees, or extractors of the toddy."

and section 13 provided against any attempt on behalf of the proprietors of toddy-trees to defraud the Government.

That was the beginning of the law on the subject, and the Council would be pleased to observe that there was no tax on the sale of tari, but a tax of 25 per cent. was levied on the amount of the rents specified in the pottahs granted by the proprietors of the toddy-trees. This Regulation, which was at first intended only for Bengal and Behar, was extended to Benares by Regulation XLVII of 1795; so that he found that from 1795 at least the law for Benares was the same as that for Bengal and Behar.

Then Regulation VI of 1800 was passed, and that Regulation was to have operation throughout Bengal, Behar, Orissa and Benares, and section 9 of the Regulation made the following provision:—

"The following amended form of license, after the expiration of the licenses now in force for the manufacture and vend of spirituous liquors (*including toddy or tari in its fermented state*) is to be adopted in lieu of that prescribed by section 10, Regulation XXXIV of 1793."

So that by this Regulation of 1800 it was clear that it was the fermented tari, when sold, that was the subject of taxation. He was no doubt aware that there was a provision bearing on the present question in section 11, which ran as follows:—

"The several provisions contained in this and the former Regulations respecting the sale of spirituous liquors are hereby declared applicable, with an exception to the rate of duty, to toddy or tari, viz. the juice of taur, khajur and narecal trees, *whenever the same may be sold in a fermented state or, though not in a state of fermentation, by any other person than the passees or extractors of the toddy* who pay the tax of twenty-five per cent. on the rents of the tari-trees prescribed by sections 12 and 13, Regulation XXXIV of 1793, which are still to be considered in full force."

The consequence of this Regulation was that the passees could sell unfermented tari without paying any fresh tax; and that any other person who intended to sell tari, whether in a state of fermentation or otherwise, was obliged to take out a license.

This was followed by Regulation I of 1808, which was passed exclusively for Behar and Benares, and the Council would see the reasons which led to the inclusion within its provisions of all tari, fresh or fermented. That Regulation was a Regulation "for commuting the tax at present levied on *taur*, *khajur* and *narecal* trees in the provinces of Behar and Benares to a tax on the sale of the tari, whether in a fermented or unfermented state," and the preamble of that Regulation declared that—

"Whereas section 11, Regulation VI of 1800 established rules for levying a duty on the juice of the taur, khajur, and narecal trees *when sold in a fermented state, or when sold in an unfermented state, by any other persons than the passees or extractors* of tari; and whereas in consequence of the rapid fermentation of tari when extracted from the trees, it has been found impracticable to distinguish with precision between the sale of the liquor in a fermented and unfermented state, so as to prevent the sale of it in the former state without the regular license required to be taken out by all persons vending tari in a fermented state; and whereas great inconvenience has been experienced in respect to the police of the country, in the provinces of Behar and Benares, from the sale of tari in a fermented state by the passees or extractors not paying the license duties, *and whereas it has been ascertained that in the above provinces tari in an unfermented state is little used, and that consequently no material inconvenience can be experienced by the inhabitants from subjecting the sale of it in every state* to the payment of the license duty prescribed by section 11, Regulation VI of 1800, for the sale of tari in a fermented state."

The Council would be pleased to observe that this was the first Regulation by which fresh tari was taxed, and the Council would also be pleased to observe that the Regulation was not to have any operation in Bengal; that it was passed for Behar and Benares on the express ground that no material inconvenience would be experienced from the inclusion of fresh tari; that the inconvenience of distinguishing between fresh and fermented tari was not the only ground for the passing of this Regulation; and that notwithstanding all the inconvenience, that Regulation would not have been passed if after enquiries that were made it had not been "ascertained" that in Behar and Benares tari in an unfermented state was little used, and that consequently no material inconvenience could be experienced by the inhabitants from subjecting the sale of it in every state to the payment of license duty.

Section 2 of this Regulation enacted—

"That sections 12 and 13, Regulation XXXIV of 1793, and section 11, Regulation VI of 1800, as far as the latter section exempts the extractors of tari from the payment of a license duty on the sale of the liquor in an unfermented state, are hereby rescinded in the provinces of Behar and Benares."

and section 6 provided that the rules prescribed in sections 12 and 13, Regulation XXXIV of 1793, and in section 2, Regulation VI of 1800, should still remain in force within the provinces of Bengal and Orissa; so that he found that the law for Behar and Benares was altered by changing the definition of tari so as to include tari in an unfermented state earlier than the alteration took place in Bengal, which was some time later, as he would presently show.

Regulation I of 1808 was followed by Regulation X of 1813, by which all the previous Regulations were swept away, and tari, whether in a fermented or

unfermented state was subjected to a license by section 15. From 1808 up to 1881 in the North-Western Provinces, and from 1813 up to the present time in Bengal, the law had been the same, namely, it included fermented and fresh tari within the definition of exciseable articles. This Regulation was followed in Bengal by Act XXI of 1856, which was called the Bengal Abkari Act, and in that Act also fermented liquor included both fresh and fermented tari. Then followed Bengal Act VII of 1878, now under consideration, which adopted the previous definition and included both fresh and fermented tari. This was the legislation in Bengal. For the North-Western Provinces he found that by Act X of 1864, and Act XXVIII of 1864, the Bengal Abkari Act XXI of 1856 was extended to the provinces under the control of the Lieutenant-Governor of the Punjab. Those Acts were repealed by Act X of 1871, and by that Act tari, whether fresh or fermented, was included within the definition of "fermented liquors." This, as had already been shown was repealed by Act XXII of 1881, and so far as the law at present stood, subject to any notification by the Local Government, fresh tari was not within the definition of fermented liquor in the North-Western Provinces, and that, MOULVIE MAHOMED YUSUF submitted, was the definition this Council should adopt.

Again, the object of all legislation for the taxation of drinks which might be intoxicating in their effect on the human system was the prevention of the spread of drunkenness by making the drink more costly. It was not merely for fiscal purposes that the Excise law was to be enacted. Accordingly, the preamble to Regulation XXXIV of 1793, cited above, professed to lay down certain rules "with a view to prevent the perpetration of crimes and at the same time to augment public revenue." And section 19, Regulation VI of 1800 also purported to lay down certain rules "*with a view to check the immoderate use of spirituous liquors, including toddy in its fermented state, by enhancing the price to the consumer*, as well as to give the Magistrate a more immediate and efficient control, and to render the tax as much as possible conducive to the general purposes of the police;" but a harmless drink such as the khajur ras, which was in no way intoxicating, but which was a mere article of food, could not come within the scope or operation of the Excise law, and should not be classified with exciseable articles.

But it might be objected that to adopt this definition would be to introduce uncertainty in the law, the uncertainty arising from the easy stage of transition by which the harmless khajur ras became an intoxicating liquor; but without using other arguments against that objection, his principal answer to that objection was that, if it applied to Bengal, it also applied to the North-Western Provinces, where it was not apparently considered to be of sufficient force to prevail upon the Legislature to retain the definition of Act X of 1871.

All considerations based on uncertainty, inconvenience, and the like, must have occurred to the Supreme Council when the Act of 1881 was before them, and he had looked into the Proceedings of the Council for reasons which led

the Legislature to change the law from what it was in Act X of 1871 to the form which it took in the Act of 1881: but no reasons were expressly assigned for the alteration. He could only find that it was on the 13th April 1881 that leave was asked to introduce the Bill: that on the 20th April 1881 the Bill itself was introduced in the Council with the provision as to tari now under consideration as in the latter Act, and the report of the Select Committee, of which His Honor was a member, was presented on the 5th of October and considered on the 26th of October 1881 without any allusion to the change in the wording of the definitions of "tari" and "fermented liquors" now under consideration. The Bill was also passed on the 26th October 1881. He was therefore not in a position to state the reasons which led to the change, although he was quite sure that the matter was considered in all its bearings and from all points of view. He thought that perhaps the thing was quite obvious, and therefore it was not considered necessary to give any reason, the points being too clear to admit of any doubt. But whatever was the reason, there was the law in its present shape in the Act of 1881, and he submitted that, in that respect, the Act of the Bengal Council should be made to conform to the Imperial Act of 1881.

The Hon. Mr. Allen said: "I have only six words to say. Reference has been made in the papers circulated from the British Indian Association to potatoes in Ireland, from which we are told rum is manufactured. But the proper reference would have been to malt, from which most of the spirituous and fermented liquor in England is made, and there is no subject in regard to which the excise exercised a more rigid control than malt As to the innocent character of fresh tari, we must suppose that, let chemists say what they may, in practice there is no such thing. I have lived in districts where the khajur ras was largely consumed, and found that whenever my servants drank it during the day, they returned muddled in the evening and with bad headaches in the morning."

The Hon. Mr. Dampier said he wished to make a few remarks directly on the speech of the Hon. Member who spoke last but one (Moulvie Mahomed Yusuf). Every one knew how dangerous a thing it was to quote an imperfect extract. In the first place he must protest against what the Hon. Member said at the end of his speech. At the beginning of his statement he read the preamble of an old Regulation, in which it was said that the object of the taxation was first to stop drunkenness, and secondly to increase the public revenue. And at the end of his speech he went back to that preamble and argued that fresh tair should not be brought under excise control because it did not create drunkenness, and because in that preamble the object of abkari legislation was said to be to put a stop to drunkenness; and here the Hon. Member omitted all mention of the secondary object mentioned in that preamble, viz. to raise revenue.

The position now taken was that, although it might be undesirable in itself to interfere with tari while actually fresh, yet that, owing to the fact of it so speedily becoming a liquor causing drunkenness, it was absolutely necessary, for the effective operation of the measures taken for checking the

consumption of spirituous liquors by taxing them, that some restrictions should be put on the possession of fresh tari, and that it should be brought under excise control.

Then MR. DAMPIER proceeded to the second point. As he understood the Hon. Member, his argument rested in a great degree on this, that the Northern India Excise Act of 1881 of the Imperial Council deliberately excluded the fresh juice from the list of articles brought under excise control, although it had been included among such articles by the previous legislation in force up to that time. The Hon. Member had said that it was true that in section 3 clause (*e*) of the Act of 1882, tari was defined to mean the sap of any kind of palm-tree, but that the very next clause (*f*) drew the teeth out of the last definition, for it provided that fermented liquor meant "malt liquor, wine, puchwai and fermented tari." This second clause (*f*) the Hon. Member said really withdrew unfermented tari from the definition in the preceding clause. The Hon. Member could scarcely wish this Council to accept the first sentence of this clause without looking at the rest of the clause. The clause ran on to say that "in any provision of this Act, if the local Government, subject to the control of the Governor-General in Council, so directs, fermented liquor shall include any other fermented liquor *and also tari*, though it may not perceptibly have begun to ferment." Therefore, the real argument to be founded on these two clauses was that in the Act of 1881 the Imperial Legislature deliberately recognised the policy of the previous Acts by which fresh tari was brought within the control of excise administration for excise purposes, and this was the direct opposite of the argument which the Hon. Member had attempted to draw from these clauses.

The HON. HURBANS SAHAI said he was of opinion that the definitions contained in clauses (*e*) and (*f*) which had been referred to should be adopted, because, as far as Behar was concerned at least, he thought the law should be the same as that for the North-Western Provinces.

The HON. MR. REYNOLDS rose to order, and pointed out that there was no such motion before the Council.

HIS HONOR THE PRESIDENT ruled that the Hon. Member was out of order in speaking of a question which was not before the Council.

The HON. HURBANS SAHAI said that in that case he would content himself by supporting the adoption of clause (*e*).

The HON. MAHOMED YUSUF remarked, in explanation of what had fallen from the Hon. Member opposite (Mr. Dampier), that he had read all the words of definition (*f*) up to the end, and he had argued that even if the Local Government did not include tari as a kind of fermented liquor, still the effect of clause (*e*), taken in connection with clause (*f*), was to include tari, whether fermented or unfermented, unless the Local Government thought proper to exclude fresh tari.

The HON. MR. DAMPIER asked whether it was or was not the gist of the Hon. Member's argument that the Act of 1881 deliberately and intentionally reversed the policy of the Legislature in bringing tari within excise control.

The HON. KRISTODAS PAL said his hon. friend opposite (Moulvie Mahomed Yusuf) had partly anticipated him in answering the legal objections which had been taken by the Hon. Mover of the Bill to this amendment, and he would not therefore again traverse the ground which his hon. friend had gone over in giving the history of legislation on the subject. He thought it was abundantly clear, from what had fallen from his hon. friend, that the primary object of legislation ninety years ago was to check the spread of the use of intoxicating drugs and drinks. The secondary object was of course revenue; but the primary object was sought to be attained by combining the fiscal and moral functions of the Government. The best way of preventing the immoderate use of intoxicating articles was to impose an excise tax on their manufacture and sale. It would be superfluous to argue this point when it had been repeatedly declared by Government that revenue was not the object of excise legislation, but the discouragement of the use of intoxicating drugs and drinks and the prevention of crime. As to the revenue part of the question, he considered it quite subsidiary to the great moral question involved in excise legislation. In commenting on the amendment, the Hon. Mover had been pleased to charge him with being revolutionary, because he had ventured to propose an amendment which was not quite in accordance with past legislation on the subject, and he called the proposal unprecedented. BABOO KRISTODAS PAL was quite willing to plead guilty to the soft impeachment. If it was revolutionary to declare that the Legislature should not tax articles of food or drink, he would not object to being called "revolutionary." He did maintain that nature had given the fresh juice and man should not tax it. In these days of progressive administration, neither the Government nor the Legislature clung to the traditions of the past. The Government now-a-days looked ahead; it was progressive; and how many measures had been of late propounded or passed which tended to shew the progressive spirit in legislation and executive administration. In that very Council at the last meeting the Hon. Mover had himself applied for leave to introduce a Bill, the object of which was to give an onward push to the political aspirations of the people, and could it be said that his hon. friend was "revolutionary," because he was made the messenger of that progressive manifesto? He proceeded in accordance with the spirit of the age, with the modern spirit of legislation and administration. and in the same spirit BABOO KRISTODAS PAL asked, if in past legislation innocent drinks were considered exciseable articles, and if on examination it was found that they were not fit subjects for excise duty, surely he, sitting in this Council, had a right to rise to the occasion and interrogate the Council whether they should follow the legislation of the past, merely because it was past legislation.

In referring to some of the Acts to which BABOO KRISTODAS PAL had adverted in moving his amendment, his hon. friend called attention to the Bombay Toddy Act, and he said that under that Act the milk of the cocoanut was included as an exciseable article. BABOO KRISTODAS PAL knew that, when the milk of the cocoanut was converted into intoxicating liquor, it was treated as an exciseable article, but he was not aware that the fresh milk of the

cocoanut was taxed in Bombay as fresh date-juice was taxed in Bengal. Then his hon. friend spoke of the serious sacrifice of revenue which would be involved by the exemption of fresh date-juice; but what was the amount of revenue derived from fresh date-juice—according to his own statement the sum of Rs. 23,000! But it was remarked that the revenue from fermented tari was 6½ lakhs, and if the fresh juice was exempted the revenue from tari would be endangered. BABOO KRISTODAS PAL did not understand by what process of reasoning his hon. friend had come to that conclusion. Probably he thought a distinction could not practically be made between fermented and unfermented tari, and therefore there would be a loss of revenue. BABOO KRISTODAS PAL had read to the Council the form of license granted for the sale of fresh date-juice, and that form made a broad distinction between the fermented and unfermented article. And if that was practically done now, why could not the same distinction be made hereafter, should the Legislature exempt fresh tari or date-juice from the scope of the excise law? Therefore the bogey of loss of revenue from fresh tari was simply chimerical. It was said that it was only in the Dacca and Chittagong Divisions that fresh date-juice was licensed for excise purposes to any large extent. But BABOO KRISTODAS PAL had heard complaints on the subject from the 24-Pergunnahs, and he might mention that criminal prosecutions were instituted in large numbers in the 24-Pergunnahs, and after a great deal of remonstrance those prosecutions were stopped; but whether such complaints were more frequent in the 24-Pergunnahs or in the Dacca and Chittagong Divisions was quite immaterial. The real point was whether it was consistent with the principles of excise legislation to tax articles of food or drink which were not intoxicating in their effects, and that was the point which he submitted for the consideration of the Council.

[The HON. MR. DAMPIER remarked that the effect of the amendment would be not only to exempt fresh tari from taxation, but from excise supervision as well.]

The HON. KRISTODAS PAL continued—Supervision was exercised by the licensing system. But what supervision was necessary over articles of food or drink? Was any supervision exercised over the sale of rice because it was converted by a special preparation into rum? Why should fresh date-juice be singled out as the article which should be brought within the cognizance of the Excise Department for purposes of supervision? It might be said that it got fermented in ten or twelve hours, it then became tari, and when it became tari it was fully within the cognizance of the Excise Department; but when it was fresh and was drunk as an innocent beverage, it should not be brought within the control of the Excise Department, because it was not then an exciseable article. His hon. friend was pleased to appeal to the cause of temperance against the amendment, but BABOO KRISTODAS PAL could not perceive the force of that appeal. *Khujur rus* was innocuous, and taken in any quantity did not produce intoxication. He could not therefore understand how he sacrificed the cause of temperance by urging its exemption from the Act, and he did not think that the interests of temperance would suffer in the least degree from such exemption. Then his hon. friend said much would not be gained practically by the

amendment, because after all there were provisions in the Act which enabled the Government to exclude certain parts of the country from the operation of the law as regards tari. He would remind the Council here of an incident which took place in 1878 when the Hon. Member passed the Bill of 1878 through the Council. He found on reference to the proceedings of the Council, held on the 13th April 1878, that he had raised this very question when the clauses of the Bill were under consideration by the Council. Then, however, he did not in his proposal include the fresh date-juice, for he was not then aware that the Board of Revenue was going to include by a circular fresh date-juice under the name of tari. Therefore he had then only referred to fresh palm-juice; and the hon'ble member in charge of the Bill was pleased to say that "there was no intention to interfere vexatiously with the production and use of fresh tari."

It would thus be seen that the same answer was given in 1878 which his hon. friends now gave in 1882. But what had been the history of the action of the Excise Department in the working of the law. He had quoted on the last occasion the Board's circular which declared fresh date-juice to be included in the term tari; he had also quoted the memorial of the East Bengal Landholders' Association complaining bitterly of the hardships, injustice, and annoyance caused on this account in those districts; he had also read an extract from the report of the Board of Revenue confirming in a manner the statement that unfermented date-juice had been largely taxed in the Dacca and Chittagong Divisions. That had been practically the working of the discretion on which his hon. friend relied in 1878 in reply to the objection taken on that occasion. The other day the hon. and learned legal member of the Government of India in moving for the amendment of the rules of business urged that not only the Legislative Bills, but also the rules issued under them, should be published beforehand for general information in order to elicit public criticism, the inference being that there should be as little room for discretionary legislation as possible. Following the spirit of the remark of the hon. and learned law member he (BABOO KRISTODAS PAL) submitted that the taxation of fresh date-juice should not be left to the discretion of the Board of Revenue, but that it should be settled definitely in the Act of the Legislature. For these reasons he contended that this amendment should be passed.

HIS HONOR THE PRESIDENT said he had a few observations to offer before putting the motion to the vote. The difficulty of attempting to introduce the smallest amendments into any existing law was well exemplified by the proceedings of to-day. The Excise law of Bengal was considered so short a time back as 1878; it was a consolidating measure and brought together all past legislation into one Act. In the present Bill the original intention was limited to the addition of a single section of the law for the purpose of giving power to lay down rules for regulating the importation and bonding of liquor manufactured in any part of British India beyond the limits of the territory to which the Act extended; but in the course of the discussion of this simple object, the Bill had grown from a Bill of one section into a Bill of fifteen or twenty sections. Thus, in enlarging the scope of the Bill, the Council found themselves committed to

the discussion again of all the old questions which it was supposed had been long ago disposed of—questions of policy and principle, and amongst them the one raised to-day, whether tari in an unfermented state should or should not be exempted from taxation. Now it was certain that the decision on this point went even much further back than 1878. There were two subjects which should be considered in dealing with excise matters: the first was to check the spread of intoxication; and secondly, to secure what was in all countries a legitimate source of revenue. On both these considerations he thought the amendment was one which should be opposed. The Hon. Mover of the amendment had pressed on the Council the point which had been met by the Hon. Member in charge of the Bill, that this measure was similar to one passed by the Bombay Legislature, which had been recently vetoed by His Excellency the Viceroy, and the argument he urged was that the Council might as well tax rice or potatoes or any other article of harmless food in the same way as it was now proposed to tax unfermented tari. The answer to that was very simple. In the Bombay case the mowha was a fruit used by the people as food. It required some careful artificial process of manufacture to convert it into an intoxicating liquor, and the same might be said of rice and potatoes and other such products. But, upon the showing of the Hon. Member himself, tari could not be enumerated in the same category, for tari or date juice by a natural process in a very short period of time was transferred into a strong intoxicant, and the Council might be quite certain under the circumstances that the result of excluding unfermented tari from the excise regulations would be that all over the country the Government would not only lose its control over the improper use of the article, and thus tend to increase drunkenness, but would also lose its revenue from fermented tari, because the whole produce of the palm and date trees would be simply kept and allowed to turn into fermented liquor, and this could neither be prevented by the Excise Officer nor brought under taxation by the Collector. His Honor was ready to admit that he was not above considerations of revenue in this matter. Practically and actually as regards the consumption of unfermented tari, its exemption might involve a very small loss, but if it was once exempted on the ground proposed, the whole revenue derived from tari would be imperilled. There was naturally an impatience of taxation in the hearts of most people, and perhaps no where more so than in India. The Government was taken to task for keeping on the license-tax because it brought in no large and increasing revenue; the stamp law was objected to as arbitrary and excessive; and so with regard to excise on spirituous liquors and other kinds of taxation, the parties who were affected by them in different ways wished the taxes which affected them to be taken off. It was clear that if all effective sources of revenue were to be abandoned, administration would be impossible, especially in days when greater demands were being made upon Government for reforms and improvements of all kinds. Here, even if the proposal for exemption was made now for the first time, it could not be entertained, because it would seriously jeopardise the public revenue; but really in the present case the Council was dealing with a question which, as was shown by the

Hon. Member on the left (Moulvie Mahomed Yusuf) went so far back as 1813. Whatever the principle might have been prior to that time it was hardly possible to be certain without very minute examination, but certainly from 1813 up to this date tari in an unfermented condition had always been included within the purview of excise taxation. The Hon. Member traced the law down to 1881, when the Government of India passed the amending Act re-enacting the Excise law of the North-Western Provinces. On that he made his stand, and asked and urged the Council to adopt the definition of tari given there, which, as the Hon. Member on the right (Mr. Dampier) had shown, did really not exclude unfermented tari. It seemed to His Honor that if the Council did really wish to re-consider the question from the point of view of what was the best form of definition, that which prevailed under the last Act of the Government of India, or that which governed excise administration in Bengal passed in 1878, remembering that tari, both fresh and unfermented, had always been the subject of taxation for the last seventy years, there was really no ground for a change in the law as it at present stood in those provinces. The difference would be just this, that while the Government of India made it possible for the local Government to exclude tari in an unfermented state when it was not considered advisable to subject it to duty, the protection here given was by section 14 of the Act of 1878, which enabled the revenue authorities to suspend the operation of the law by excluding all tari where its consumption even in a fermented state was inconsiderable. The remedy for any grievous abuse was in the hands of the chief revenue officers and would be rightly exercised.

On these grounds—on the ground that it was not open to the objection which was taken to the Bombay legislation as taxing an innocent beverage, an objection which His Honor thought did not apply to tari; and on the ground that there was no just reason for going back from the policy of seventy years, and excluding unfermented tari from liability to duty—he felt bound to oppose this amendment.

The question was then put and negatived on the following division :—

Ayes 4.	*Noes* 7.
The Hon. Hurbans Sahai.	The Hon. Mr. Caithness.
The Hon. Mahomed Yusuf.	The Hon. Mr. Allen.
The Hon. Bhudeb Mookerjee.	Colonel the Hon. S. T. Trevor.
The Hon. Kristodas Pal.	The Hon. Mr. Macaulay.
	The Hon. Mr. Reynolds.
	The Hon. Mr. Dampier.
	The Hon. the President.

The Hon. Kristodas Pal moved that in section 3, paragraph 2, line 2, the words "for the manufacture of spirituous liquors" be inserted after the word "still." He said that as the Hon. Member in charge of the Bill seemed disposed to accept this amendment he need not adduce any arguments in support of it.

The Hon. Mr. Reynolds said he accepted the principle of the amendment, but he had reason to complain of some of the language which had been used in connection with the question. Any one would think, from the letter of the British Indian Association, that this was the first time it was ever proposed to make the possession of an unlicensed still an offence. If the Council would turn to section 39 of the existing law, they would see that the necessity for inserting section 3 of this amending Bill was really nothing more than a matter of drafting, and that it made no difference whatever in the law. Section 39 of Act VII of 1878 empowered excise officers to arrest persons having in their possession unlicensed stills and to seize the stills. There was, however, no provision in the Act declaring the possession of an unlicensed still illegal; and section 3 of the Bill was therefore inserted. He did not, however, object to the amendment.

The Hon. Kristodas Pal said in explanation that his object in proposing this amendment was simply to prevent any misconception which might arise. He quite agreed with the Hon. Mover that it was a mere question of drafting.

The Hon. Mahomed Yusuf said that according to the ordinary principles of the construction of Statutes this section of the Bill would be read as if the words now proposed to be inserted were already in the section, because the object of the Excise Act was to prevent unlawful dealing with exciseable articles; and the words "possession of a still" occurring in section 10A must evidently mean the possession of a still contrary to the object and intention of the Act. But inasmuch as the object of the amendment was to make that expressly clear which was so by implication, and to state clearly the intention of the law by introducing certain words in the section, he supported the amendment.

The motion was put and agreed to.

The Hon. Kristodas Pal moved that in section 4, paragraph 2, the words "imported by sea" be omitted; and also that paragraph 4 of the same section be left out. He said that this question had been raised in Select Committee in amending the Bill. It might be in the recollection of hon. members that when the Bill was re-committed, it was suggested that the law should declare specifically the quantity for the retail sale of spirituous liquors, giving power to the Board of Revenue to increase that quantity if they thought it proper. In Committee it was proposed that the quantity for the retail sale of country liquors should be reduced from twelve bottles to one bottle, retaining, however, the existing quantity for the sale of imported liquors. He considered it his duty in Committee to object to this alteration, and his reasons for doing so were, firstly, that no satisfactory reason had been given shewing why the quantity for the retail sale of country spirits should be reduced, and whether the existing rule had led to any abuse; and secondly, that by making what he could not but consider an invidious distinction between imported and country liquor, the Excise Department would practically encourage the consumption of imported liquor. As far as he understood the Hon. Mover, he intended to consult the Board of Revenue

on the subject, and he believed he adhered to the amendment after consulting the Board. BABOO KRISTODAS PAL thought it was due to the Council that when a material alteration of this kind was proposed, the reasons for it should be fully laid before it. He for one, whether in Council or in Committee, had not been made acquainted with the reasons which had led to the proposed alteration. The only reason assigned was that formerly the limit of one seer was fixed for the retail sale of country spirits. But it was not explained why the limit of one quart bottle was raised to twelve bottles in the law of 1878, and why it was now considered necessary to revert to the old limit of one seer. Perhaps it might be urged that the quantity was fixed according to the custom of the trade, that those who purchased imported liquor bought by the dozen, and those who used country spirits bought it by the bottle. That might be the reason which had led to the alteration proposed, but he submitted that if that was the reason, surely it could not have been absent from the mind of the Hon. Member who introduced the original Bill in 1873, because the Act of 1878 dated its origin from 1873. It was introduced when Sir George Campbell was Lieutenant-Governor of Bengal, and afterwards the charge of the Bill was taken over by his hon. friend on the left (Mr. Dampier). BABOO KRISTODAS PAL submitted that when the Legislature in passing the law in 1878 made a material alteration by raising the limit for the retail sale of country liquor from one to twelve bottles, they must have had good and sufficient reasons for making the alteration, and he had not heard of any new circumstances or reasons which necessitated a return to the old rule. He had referred to the custom of the trade as probably affording the reason for the change now proposed, but he submitted that that was not the invariable custom. He learned that in Calcutta, for instance, country liquor was frequently sold by the dozen like imported liquor. In the mofussil, it was true, it was largely sold by the bottle, but he was informed that in many instances, three, four, five, six, and even a dozen and two dozen bottles were purchased at a time; and, particularly when punchayets were held, large purchases were made. He believed it was also becoming the practice in many parts of the country to purchase more than one bottle for home consumption, so that it could not be strictly accurate to say that country liquor was purchased by the bottle, and therefore the proposed limitation of retail sale to one bottle. He repeated that he should like to know the reason why the Board in 1878 recommended the increase of the limit for the retail sale of country spirits from one to twelve quart bottles.

He hoped he might be permitted to say that he was an advocate of temperance, and that any measure which might conduce to the suppression of intoxication and drunkenness would have his hearty support. If the proposal had been that the maximum quantity for retail sale should be reduced all round, he would most readily and willingly give his support to it. By all means let the limit be reduced, if considered necessary in the interests of temperance; but if, as had been shewn clearly in some of the Government resolutions, country liquor was less deleterious than the imported liquor sold in mofussil shops, he held that any impediment to the consumption of country liquor in

preference to imported liquor would be most detrimental to the interests of the community. He feared that if the limit for the retail sale of country spirits was reduced, the consumption of imported liquors of the kind he had indicated would be necessarily encouraged. He did not know if he was quite right in raising the question of free trade policy in connection with the subject, but if the consumption of imported spirits was encouraged or facilitated to the prejudice of country liquor, it would be in a manner protecting the importation of the foreign article, and such a course would be opposed to the acknowledged free trade policy of the Government. He found, on referring to the Statement of objects and reasons, that one of the objects of the Bill was to meet the legal objection taken at the High Court as to the power of the Board to regulate the quantities for retail sale. But it was not urged in that statement that the quantity for the retail sale of country liquor should be reduced. Evidently the idea was an afterthought; and as he had already said, not being acquainted with the real reasons which had led to the alteration, he could only answer his hon. friend in anticipation of what he might have to say. He hoped the reasons he had adduced would satisfy the Council that no case has been made out for the alteration which had been made in the Bill.

The Hon. Mr. Allen said: "Sir, I was one of the Select Committee, and I dare to defend this *invidious distinction.* But for the previous experience I have had of the sort of objections which commend themselves to the mind of the Hon. Member who moved the amendment, I should be exceedingly surprised at his action on the present occasion. From the manner in which this amendment has been brought forward, one would suppose that the Bill before the Council is now introducing an important practical change; but this is not the case. The limit of twelve seers for sale of country spirits in the former Act is rather a theoretical limit than a practical one, as the Hon. Member in charge of the Bill will doubtless fully explain. As a fact, I believe nowhere are twelve seers of country spirits allowed to be sold retail, and the only effect of the present amendment, if accepted throughout the provinces, must be to afford increased facilities for unlicensed vend of country spirits, with a very probable increase of mofussil drunkenness. We have lately read in the vernacular press *ad nauseam* of the terrible demoralization that has attended the abolition of the sudder distillery system, because, forsooth, the various secret agencies for the surreptitious sale of country spirits have been brought to the surface and made to contribute their quota to the general revenues. I cannot for a moment suppose that the Hon. Mover of the amendment has the least desire to increase this demoralisation: on the contrary he has professed himself to be an ardent advocate of temperance. But then he has a horror of "invidious distinctions." He would probably defend himself by saying with Brutus "not that I loved sobriety less, but I loved equality more." Now I would observe that equality is not always equity. In arithmetic, if we have two different numerators, and put the same denominator under both, we shall get fractions of very different values. Let any one place a five maunds load on the back of a Bengalee coolie and on a Chinese porter, the results will be somewhat different: nature will in this case

prove pretty clearly that equality was not equity. Before, therefore, the amendment before the Council could be justified on the ground of twelve seers being the limit for retail sale of imported spirits, the mover was bound to shew that the circumstances under which imported liquor and country spirits are consumed are identical. Now I contend that there is not the slightest analogy or similarity between the two traffics. The persons by whom the trade in the two different kinds of spirits is carried on differ *toto cœlo;* the consumers are altogether different, and the circumstances under which they purchase and consume the liquor differ also. The drinking public of Bengal consist of two classes at the extreme poles of the social scale—one the so-called advanced and enlightened Baboo, who with a greater or less knowledge of the English language unfortunately too often imbibe a taste for imported liquors; on the other hand the consumers of country liquor are that unclassifiable residuum which is even beyond the pale of the indigenous vernacular schools. The gulf between the two classes is simply impassable. I have heard of Baboos—I have known Baboos—who took to champagne and ice. I have heard of those who loved brown sherry, and of numerous others who took to a variety of drinks, but I never heard of any with the least tincture of English education who came so low as country spirits. On the other hand, it is exceedingly unlikely that those who consume country spirits would take to imported liquor. In Calcutta there might perhaps be an amalgamation of the two classes, but in the mofussil those who consume country spirits will continue to do so, whether the limit of retail sale be one seer or twelve seers. The essence of the distinction between the consumers of the two classes of spirits consists in this, that those who drink country spirits drink it on the premises where it is sold, as any one can see who goes a few miles from Calcutta and pays a visit to the first sooree's shop he comes across. Country spirits are, to quote the expression of the Hon. Mover of the amendment, essentially the poor man's luxury.

On hât days one may see a dozen or twenty peasants, *palki* bearers, dhobees, or such like in front of the sooree's shop in a circle, each man sitting on his heels in what may be called the national attitude. The sooree goes round with an earthen kulsi of liquor under his left arm, a two or three chittack measure in his right hand, and as he passes round he pours down the throat of each of his customers the small measure full of spirits. Will the Hon. Member pretend to say that it would be right to allow that spirit vendor to pour down those innocent throats *twelve seers of country spirits?* On a recent occasion, when a somewhat similar question was before the House of Commons, an Hon. Member laid it down as an indisputable principle that every man has a natural right to as much liquor as he can carry—and more. I accept the criterion. Judged by it, our Bill infringes no natural right. The Hon. Mover of the amendment will himself admit that one seer of country spirits is as much as any of his clients can carry—and more. The inference under such circumstances necessarily arises that the rules provided for the retail sale of country spirits should be such as are laid down for a sale under a license to drink on the premises, and must be different from those which would be

applicable to such places as the Great Eastern Hotel, Bissonath Law and Company, and similar places for the sale of imported liquors. To say that an invidious distinction has been made because different rules are provided for a totally different state of circumstances argues, I venture to submit, a very warped judgment. It has been said that in reading a man finds in a book exactly what his mind brings to its perusal, and probably the same is true of a Bill.

The invidious distinction which the Hon. Mover of the amendment finds in the rules laid down in this Bill therefore is only the objective presentiment of the invidious distinction which already exists subjectively in his own mind. Having passed through its focus, the external image is necessarily an inverted reproduction of the original. I trust, Sir, the Council will lend no countenance to this morbid sensitiveness, this perverted ingenuity—the curse of Young Bengal, whose main support is derived from the perpetual discovering of "invidious distinction."

The HON'BLE MAHOMED YUSUF said that in this instance he was unable to support the amendment, although his reasons were not exactly the same with those which had just been given to the Council. He based his opinion on what had passed in the Select Committee, of which he was a member. It was true that no allusion was made in the statement of objects and reasons accompanying the Bill to the point now under consideration. But that was for obvious reasons, for this point was mooted for consideration subsequently. After the Bill had been referred to the Select Committee, a question was raised whether the power which the Board of Revenue possessed under section 15 of the Act of increasing and decreasing the quantities specified under that section should be continued in the same form in which it stood under the section. He had suggested to the Select Committee that the Board should only have the power of increasing the quantities, because otherwise great uncertainty would prevail; whereas if the power given to the Board were only one-sided, that is to say, if the Board were only to be entrusted with the power of increasing certain quantities specified in the Act, the public would have something in the Act by which they could guide themselves. He took an instance and supposed that if four seers of tari were specified in the section and the Board desired to raise the quantity under the power reserved to them from four to six seers, a person who was in possession of only four seers was sure against a criminal prosecution in consequence of the provisions of the Act itself; but if he were to have five seers of tari in his possession, he would still be protected by the rules of the Board, although he had gone beyond the quantity specified in the Act. And thus there would be no criminal prosecution until the limit of six seers was exceeded.

Therefore, in order to be on the safe side, a person had only to limit himself to the quantity specified in the Act, and he was more than sure against a criminal prosecution, which he could not be if the Board possessed the double-sided power of both increasing and decreasing the quantities specified in the section. By his suggestion, therefore, the result was that if a person conformed to the law he was safe. But by the language of the law as it stood,

a person was not sure even if he conformed to the law. The suggestion had therefore been adopted by the Select Committee.

But at the same time he had thought it proper in the Select Committee that the quantity specified in the section should be revised, and he was of that opinion because the different laws on this subject all specified lesser quantities than that which was stated in the Bengal Excise Act. In the Imperial Council's Act of 1881, the quantities specified were for foreign fermented liquors 12 bottles, and for country spirits one seer. It appeared to him that the quantities specified in the Bengal Excise Act might as well be altered and revised as proposed by the Hon. Mover of the Bill.

The Hon. Mr. Macaulay said that he was not aware, till he entered the Council Chamber, that it was intended that the discussion on the amendments on the paper should proceed that day. He was under the impression that it would be postponed on technical grounds until the next meeting of the Council. Any difficulty, however, which he might thus experience was removed by the copiousness of the opportunities for reply which the speech of his hon. friend, the mover of the amendment, had afforded, by the number of the false issues he had raised and the number of the irrelevant considerations to which he had appealed. His hon. friend had fallen into a remarkable series of errors—errors of fact and errors of principle. The former had been chiefly exhibited in his treatment of the history of the question. He had discovered an inconsistency betwen the action of the Legislature in 1878 and the action which it was proposed to take now, because the law of 1878 fixed the retail limit for country spirits at 12 quart bottles, whereas it was now proposed to fix it at one seer. But in truth there was no inconsistency at all; for the simple reason that the limit fixed in 1878 was intended as a maximum, while the limit now proposed was intended as a minimum. The limit fixed in the Act of 1878 was in fact never reached. Before that Act was passed, the retail rate was everywhere one seer. As soon as the Act was passed the Board of Revenue, under their order of 6th April 1878, raised it in most districts to six quart bottles, but in certain districts or parts of districts, chiefly on the frontier, the old limit of one seer was maintained because it was considered necessary. There was certainly no competition in these districts between country and imported spirits. He found from the returns that there was only one retail license for the sale of imported liquors in Pooree, four in Julpigoree, two in Mozufferpore, four in Durbhunga, four in Chumparun and so on. He had not heard any attempt to shew that this limit was other than a proper one for the districts in which it was in force. But there was high legal authority for thinking that the rule under which it was maintained was not in accordance with the law as strictly interpreted. The obvious course therefore was to fix it as the minimum, leaving the Board to raise it where this course might be desirable. The limit being permissive, the Board would certainly not introduce it where it had hitherto been found unsuitable, and accordingly the picture of repression which the Hon. Member had drawn was one which would exist only in his own imagination and in the archives of this Council. The position would remain precisely as it was at present. The answer, therefore, to this

part of the Hon. Gentleman's argument was, first, that we must lay down some minimum if we wished to act legally; second, that one seer had been found to be the proper limit for certain districts, and must therefore be taken as the minimum; third, that the existing limits would not be interfered with in these districts or in any other district. The Hon. Gentleman had also made several mistakes of principle, of which one had been fully disposed of by his hon. friend Mr. Allen. It was impossible to pretend to make uniform rules for liquors which differed in the customs of trade, in the habits of consumers, in the conditions of manufacture, of custody, of sale, of transport; in fact in practically every characteristic except the single common property of intoxicating effect. He need say nothing further on this point. There was, however, another error of his hon. friend which seemed to him very remarkable. They had been told that unless the retail limit was reduced for imported liquors there would be an invidious distinction in their favour, that they would be protected, and that a premium would be held out to them. He had never before heard that we protected an article, and held out a premium to it, by taxing it. The whole argument of his hon. friend on this point rested upon the theory that articles can be purchased more cheaply by retail than by wholesale. His hon. friend assumed that if the limit of 12 quart bottles for imported liquors were reduced the price would be increased. He here missed the *rationale* of the difference between retail licenses and wholesale licenses. The wholesale vendor was supposed to sell only to vendors, who would again sell to consumers. As a matter of fact it would be impossible to fix any limit which would secure that every wholesale license covered only wholesale transactions, and every retail purchase was covered by a retail license. Individuals would purchase large quantities for their personal consumption, but if we endeavoured to raise the retail limit so as to include them, we should be compelling wholesale vendors to take out retail licenses to cover still more numerous genuine wholesale transactions. The Hon. Gentleman had overlooked the simple fact that all liquor purchased by retail pays two licenses, and is consequently more costly than liquor purchased by wholesale The effect therefore of reducing the limit for European liquors from 12 quart bottles to say 6, would be to make all liquor purchased in quantities varying from 7 to 12 quart bottles cheaper than it now was. In fact, if we did not go so low as to harass retail vendors, so as to compel them to take out wholesale licenses as well, the nearer we went to general wholesale the cheaper we should make the liquor. The proposal of the Hon. Member would have precisely the opposite effect to that which he contemplated. His whole argument in support of the amendment appeared to rest on no ground of fact, principle or economy.

The Hon. Mr. Dampier said the Hon. Mover of the amendment made some remarks to which he should, as a Member of the Board of Revenue and particularly with reference to the personal allusion to himself as connected with the passing of the former Bill, be expected to give an answer. The Hon. Member wished to know why in the last Act the maximum quantity for the retail sale of country spirits was altered. Mr. Dampier had no recollection

himself of having taken a part in any of the discussions on that point, and having just looked through the proceedings of the Council, he found that in 1878 he took charge of the Bill, after it had been reported upon by the Select Committee, with the view of carrying it formally through the Council, except in regard to two points; one of them being on the question of the inspection of druggists' shops, and the other prohibiting the institution of suits in the Small Cause Court for liquor drank in hotels on the model of the English "Tippling Act." He did not take part in any other question in connection with the passing of the Excise Act of 1878, and he was, therefore, not able to give any answer to the question why the maximum retail quantity of country liquor was altered.

The Hon. Mr. Reynolds said he thought sufficient reasons for this section had been given in the report of the Select Committee, and in the speech of the Hon. Member opposite (Mr. Macaulay), but he might perhaps be allowed to add a few remarks on the subject. The effect of the amendment would be to raise the limit both of country spirits and of imported liquors equally to twelve seers, that being the minimum quantity from which no reduction would be allowed. The Hon. Member opposite (Mr. Macaulay) had explained the practical reasons which existed against the amendment, because the limit of one seer was and still continued the limit in several districts as regards country spirits. When the Bill in its original form came before the Select Committee, Mr. Reynolds understood, and he believed all the Members of the Select Committee understood, that the principle that the Board should have power only in the direction of raising the limit had been definitely accepted. If that principle was accepted there was no doubt that the quantity specified in the section must be the minimum quantity practically in use. He found on consulting the Board of Revenue that the quantity of one seer was actually the limit in certain districts, and that there were practical reasons why that limit should not be raised. That was the reason why the Bill reduced the quantity of country spirits from two gallons to one seer. But then it was said, why not reduce the limit for the sale of imported liquors to the same minimum? The simple reason was that, for imported liquors, there was no object in making any change. The quantity of two gallons had always been the rule, and there was no reason for altering it. As for what was said to be the invidious distinction made between one kind of liquor and another, it was not as if this principle was new to legislation The Northern India Excise Act of 1881, which had been held up as a model to the Council, as did the previous Act of 1871, made the same distinction. So that the change was not proposed to be made by the Bill, but by the amendment of his hon. friend, and Mr. Reynolds must decidedly object to it.

The Hon. Kristodas Pal said in reply that he thanked the Hon. Members who had spoken for vouchsafing to him some of the information which he had asked for, but he must confess that he had not yet received full information. The Hon. Member on the left (Mr. Dampier) had explained why he was unable to give the Council the reasons which led the Legislature to raise the old limit of one seer to twelve quart bottles by the Act of 1878.

[The Hon. Mr. Macaulay explained that the limit given in the Act was a maximum; the intention was to give the Board power to reduce the limit as circumstances required.]

The Hon. Kristodas Pal continued—Whatever the intention was it was not expressed in the Act, and according to a well-known legal maxim the intention of the Legislature could only be gathered from the context of the law; and here the law was very clear that the limit for the retail sale of country spirits was fixed at twelve seers. But he would not quarrel about this point. He had already said that the non-official members of the Council would be exceedingly obliged if, when Bills were laid before the Council, they were put in possession of all the information which might help them in studying those Bills. Up to this moment they did not know the reasons which had rendered the alteration of the law necessary, for if he had known the reasons he might not have put forward the amendment, or urged it in the way he had done.

With reference to what fell from the Hon. Member opposite (Mr. Allen), he had been pleased to read him a homily for which Baboo Kristodas Pal felt thankful to him. His hon. friend said that equality was not always equity, and that imported and country spirits could not always be placed on the same footing. Baboo Kristodas Pal fully admitted that the consumption of imported and country liquor by the natives of the country would have different effects, and it was because he was inclined to think that the provision in this Bill might tend to encourage the consumption of imported liquor, which he considered would be more injurious than the use of country liquor, that he was of opinion that factitious encouragement should not be offered to the former. His hon. friend described at some length the circumstances which led to different action on this question. He took the enlightened "Baboo" as he called the educated native, at one end of the social ladder, and the rustic cultivator at the other end, and said that the enlightened Baboo drank imported spirits and the rustic labourer imbibed country liquor. Baboo Kristodas Pal could not say how far his friend's experience extended, but as a native of the country, he could say that his countrymen in the mofussil did not very largely consume imported spirits. In Calcutta it might be different; but he was told only the other day by no less than five Deputy Collectors that the consumption of country liquor was extending among educated and wealthy natives in the mofussil.

Nothing could be more disastrous to the health and morals of the people than the spread of a taste for deleterious imported liquor, particularly among the rural population. He was disposed to think that the use of country liquor was much less harmful than that of imported spirits; but he was not prepared to admit that the enlightened "Baboos" in the mofussil consumed only imported spirits. And if they did, what did the argument lead to? It meant that the Council should encourage the consumption of the more harmful article by lowering the retail sale of the less harmful!

He was of opinion that the Government should discourage as much as possible the consumption of intoxicating spirits by the people of this country,

but if a line was to be drawn, it ought to be drawn in favour of that which was less injurious. Some of their greatest and wealthiest men had died victims to drink craving, and the manifest duty of Government was therefore to discourage it as much as possible.

Then he was told that the custom amongst the people here was to drink on the premises or in the shop, and therefore the limit of one bottle would not be inconvenient to them. But he rather believed that if one man drank at the premises of the vendor, 10 or 20 drank at home; therefore he did not think that the custom alluded to ought to govern the lowering of the quantity for retail sale. His hon. friend had presented to them a glowing picture of 20 or 30 rustic people gathered together on the premises of a liquor vendor, who went round with a pot of liquor in his hands pouring country liquor down the throats of those innocent men, and asked the Council to imagine what would be the result if the limit for retail sale was raised to twelve bottles. But BABOO KRISTODAS PAL would ask whether the mischievous effects which his hon. friend depicted would be lessened or decreased if the liquor vendor were to pour deleterious imported spirits down the throats of these innocent men?

He raised the question between imported and country spirits not from "morbid sensitiveness" or "perverted ingenuity," but from a desire to discourage as much as possible the consumption of imported liquor which he considered was more injurious than otherwise. He alluded to the bad and nasty Radha Bazar stuff, which was sold in native shops under the name of imported spirits—not what European gentlemen generally drank.

Then his hon. friend on the other side (Mr. Macaulay) had made a very important revelation. He said that the statement of facts and the enunciation of principle made by BABOO KRISTODAS PAL were equally wrong, and in correcting his mistake the hon. gentleman said that the limit of twelve bottles laid down in 1878 was in practice never observed; that it was six seers in Dacca and other places, and one seer in others; and that the Board had fixed the limit with reference to the circumstances of each place. So legislation was one thing and executive action another. There was also another argument put forward by the Hon. Member which BABOO KRISTODAS PAL did not clearly understand. Did he mean that the minimum limit would not materially affect the consumption of country liquor, because the retail vendor generally held two licenses, that was to say, one for retail sale and another for wholesale? As far as BABOO KRISTODAS PAL was aware that was not the fact. As for the economic argument advanced by the Hon. Gentlemen, viz. that the distinction made in the retail sale of imported and country liquor would not be attended with protectionism, BABOO KRISTODAS PAL could only say that he did not appreciate the force of this argument. He thought it was obvious that if there were two similar articles for sale, and if the tariff encouraged the sale of the one to the prejudice of the other, the result would necessarily be the protection of the favoured article.

Holding this view, he thought it was undesirable that any distinction should be made between the sale of country and imported spirits.

The amendment was then put to the vote and negatived on the following division :—

Ayes 2.	*Noes* 9.
The Hon. Bhudeb Mookerjee.	The Hon. Harbuns Sahai.
The Hon. Kristodas Pal.	The Hon. Mahomed Yusuf.
	The Hon. Mr. Caithness.
	The Hon. Mr. Allen.
	Colonel the Hon. S. T. Trevor.
	The Hon. Mr. Macaulay.
	The Hon. Mr. Reynolds.
	The Hon. Mr. Dampier.
	The Hon. the President.

ROAD TRAMWAYS.

COLONEL THE HON. S. T. TREVOR, in moving for leave to introduce a Bill to authorize the making, and to regulate the working of, tramways in Bengal, said :—

"Sir,—I rise to move for leave to bring in a Bill to authorize the making and to regulate the working of road tramways in Bengal. It is fortunate for me, Sir, that in the speech with which you opened this session of the Council you explained so fully the circumstances which had led to the necessity for introducing this Bill; otherwise, in my inexperience of the legislative work of this Council, I should have felt—as indeed I still feel—great anxiety and diffidence as to my ability to be an adequate exponent of the measure. The way has now, however, been so far cleared before me that this Council has already been made aware of the reasons which render legislation on this subject necessary, and in the few supplementary remarks I have to make, I need only trespass on the patience of Hon. Members at very short length.

The only Act on the subject of tramways in force in Bengal is Act I of 1880 of this Council. It applies only to Calcutta and its suburbs, and under its operation this city has been provided with the net-work of tramways with which Hon. Members are all familiar. I fear I shall be not far wrong in saying that one effect of that familiarity has been to implant in the minds of many people, and, perhaps, even of some Hon. Members here present, a lurking belief that the tramways are not altogether an unmixed good. For my own part I must confess that whenever I have had occasion—and that not seldom—to look somewhat ruefully at the havoc played with the wheels and tyres of my carriage, I have felt disposed to bless tramways with only a very faint blessing. But these are sublunary considerations which I trust Hon. Members will banish from their minds in considering the Bill which I am asking leave to introduce. Everything has another side, and it will be my endeavour, to the best of my ability, to present the other side of the tramway question to your consideration.

The first and, perhaps, the most important feature of that other side is the financial success which so generally attends well-managed schemes of

tramway. Indeed, I believe the best antidote to the grievance I have just alluded to about damaged wheels and tyres would be the possession of some shares in the Tramway Company which might happen to be the cause of offence. At least I judge so from my experience on what used to be called the Darjeeling Tramway. If ever you saw any passenger cheerfully or stoically enduring all the incidental discomforts of a ride on that tram, while every one else was giving vent to the fiercest grumbling, you might be sure he was a shareholder whose equanimity was due to the recollection of the premium at which his shares were quoted.

The published report of the Calcutta Tramways Company for 1881, which I have here, shows that the dividends of that year were an average of 7½ per cent., and I believe I am justified in saying that the current year's working promises to show not less favourable results. And this is only the second year of working. Moreover the tramway is entirely a private enterprise, without any guarantee or subsidy from Government; not only so, but it pays a rent to the Corporation of Rs. 2,000 to Rs. 3,000 per mile per annum for the use of the roadway occupied by it.

Another feature of the tramway is the boon that it is to the poorer classes of the community. In 1881, the first year of working, when the lines were only partially completed, the number of passengers carried was 3,267,559. In the present or second year of working, the number of passengers has increased to 5,941,874, or very nearly six millions, and the receipts from these amounted to about 4½ lakhs of rupees. The number of passengers next year, estimated by the traffic of the present time, will be 6¾ millions. The average distance a passenger is carried is 1¼ mile, and the average fare received from each passenger is five pice, of which, roughly speaking, about four pice covers the gross expenditure of the tramway, and one pice remains as net profit. Hon. Members have no doubt occasionally had their attention drawn to that remarkable vehicle, a third class *ticca* gharry. The authorized fare payable for the use of one is three annas for the first mile and two annas for each succeeding mile. Therefore, if four people club together to charter one, as they often do, each of them would have to pay five pice, or the same fare for which he could perform a similar journey in a tram car. I have never undergone the experience of a joint-stock journey of this sort in a third class *ticca*, but I have no hesitation in saying that I would go in a tram-car by preference if I had the choice.

Not only is the tramway appreciated as a boon by natives, but it is largely patronized also by Europeans; and experience has proved one rather interesting fact, which is that Europeans show as much disinclination to waste a pice as natives do. When the tramway was first started, the seats were arranged in two classes, those in front being made more comfortable with cushions, and charged at a higher rate. Soon, however, it was found that very few people patronised these first class seats, and that Europeans as well as natives all went to the second class. The result was an inconvenient one, for the tram-cars had to run too heavy behind and too light in front, and the experiment was abandoned. Now there is only one class.

If, then, the establishment of tramways is appreciated as a boon by natives and the poorer classes generally, and if it is found that they can be constructed and worked as profitably here, in India, as in other parts of the world, it will also be found that India, with its huge populations, affords a large field for their development. That development will, I believe, take the form not only of a multiplication of projects, but also of an adaptation of the mechanical nature of this means of conveyance to the peculiar circumstances and wants of this country. In Calcutta the tramway is contrived after European models, but already, I think, we can see differences which not only the climate, but the habits of the natives of this country render inevitable. If this is the case in Calcutta, where the community, the streets, the character of the traffic, are all in a great measure Europeanised, and where there is a public opinion always ready to criticise faults, how much greater will be the departure from preconceived models when tramways are constructed in towns or rural tracts in the mofussil, where roads may be narrow and unmetalled, and where public opinion is not wont to express itself very frequently or forcibly.

Where money is to be made, and where the wants of the poorer classes of the native community are recognized and appreciated, we may be sure that schemes will be set afloat by native speculators to supply those wants in their own humbler fashion, but still in imitation of the more substantial European prototypes. We may already see on the Hooghly many little steamers plying with their decks covered with seething crowds of native passengers, and managed in a primitive fashion that would be pronounced to be absolutely and hopelessly impossible by the Captain of a Peninsular and Oriental or British India Steamer. Yet these things pay, and no doubt give great satisfaction to the classes who patronise them. So it requires no prophetic vision to foresee that, as time goes on, we may have combinations started wherever there is a prospect of profit, for the establishment of cheap communications by means of inexpensive tramways adapted to the wants of the people of this country. No one can tell how different they may be from our present ideas of what a workmanlike and well-managed tramway should be. For all I can tell, there may be as much difference between a London or a Calcutta tramcar and the future tram-car of indigenous development, as there is between a Pickford's van and a bullock gharry, or between a London omnibus and a third class *ticca*. Of course, speaking as an Engineer, I may say that true economy and success are inseparable from solidity of construction and efficiency of management as we conceive them to be. The process of evolution with us, therefore, is always in the direction of additional strength and solidity. But there is nothing more absolutely certain than that there are ways of managing and doing things in India very different from any that are dreamed of in our philosophy.

I trust Hon. Members will not imagine from the remarks I have made that a new era is to be at once opened in the matter of cheap communication by anything that is contained in the Bill which I am asking leave to introduce. That Bill is merely intended to convey legal powers to Municipalities and other local authorities to promote the construction and working of tramways in their

respective jurisdictions. All I wish to indicate by my remarks is, that there may be many ways in which the powers thus granted may hereafter fructify; and that it is advisable to bear this in mind in framing the wording of the Act, so as not to limit its applicability too closely to any particular form of tramway that has hitherto been present to our minds.

I need not detain the Council by describing the structure or provisions of the Bill in detail, as that will be better done when the Bill is in the hands of Hon. Members.

I now beg to move for leave to introduce the Bill.

The motion was put and agreed to.

The Council was adjourned to Saturday the 6th January 1883.

Reg. No. 15103G—300—12-7-83.